

WOODSTREET-COMPTERS.
PLEA, for its Prisoner.

O R

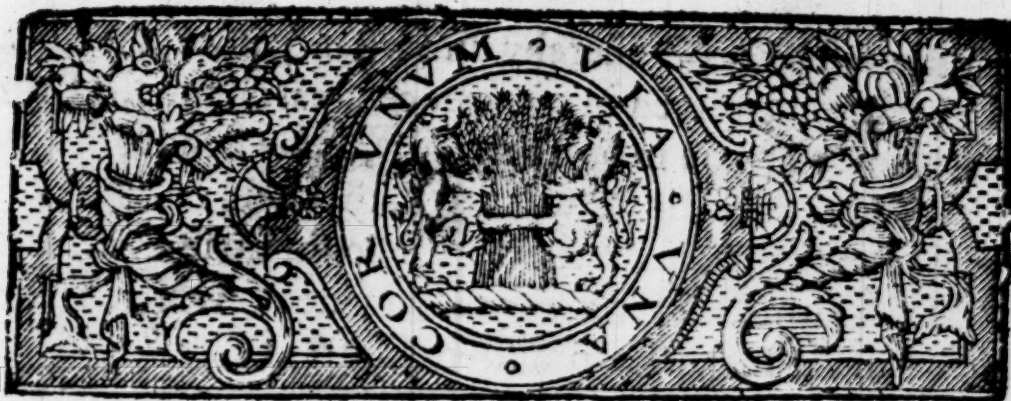
The Sixteen reasons, which induce mee *Nathaniel Wickins*,
late Servant to *Mr. William Prynn*; but now Prisoner
in the sayd Compter. To refuse to take the
Oath *Ex Officio*; wherein it is plainly proved,
that it is unlawfull when it is given only to the
searching out either of a Crime against our
selves, or pretended against our brethren, with
the Objections to the sayd reasons fully
answered.

Jeremiah: 23. ver: 10.

*For because of swearing the Land mourneth: the pleasant
places of the wilderness are dried up, and their course
is empty and their force is not right.*



Printed in the second yeare of remembrance,
1638.



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the Objections to the sayd reasons fully
answered.



Whoever thou art (*Christian Reader*) know this
that with *Domitian* I have chosen rather to
catch flies, then to bee Idle. And although
in respect of learning & experience, I be farr
short in ability to exhort or dehort, especially
since the matter doth concerne those that are or
should be both learned and experienced

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 rienced themselves, and thereby understand more then I can
 advise; yet being greived in conscience, pardon me, if I pre-
 sume to admonish you in brotherly sort, as my slender skill wil
 permitt, having taken in hand a task, that will rather induce
 hatred then winne love; But before I begin these my reasons
 against the Oath *Ex Officio* (the substance of which J lately
 preferred in the High-Commission-Court of *Lambeth*) I have
 thought fit for sundry considerations to desire you to take no-
 tice, that in these my reasons (which induce me to deny the
 said Oath) J doe not goe about either to deny the power of
 Magistrates (I doe not say Bishops, for they have no power to
 administer Oaths, but only in case of * Testament and Matri-
 mony) in giving Oathes, nor to perswade the subject from
 taking them, because the Magistrates have authority to cause
 these that be under them to sweare, and to take Oath, as ap-
 peares by many examples of Scripture; as first, by that charge
 that *Ioshua* gave to all the Magistrates of Israell, that they
 shall not make mention of the Gods of other Nations, nor
 shall cause to sweare by them, *Iosh. 23. 7.* Secondly, by that
 of *Saul*, who not only charged the people with an Oath, but
 made them vow with a curse not to eat any food that day
 till night, *1. Sam. 14. 24.* and by his urging of *David* to sweare
 unto him, that he would not destroy his posterity after him.
1. Sam. 24. 22. 23. Thirdly, by that of *King Salomon*, who
 when he meant for a punishment to confine and imprison *Shi-
 mei*, within the compasse of Ierusalem, for his revilings of
King David, telleth him, *1. King. 2. v. 42. 43.* Did J not make
 thee (saith he) to sweare by the Lord, and protested unto thee,
 saying, know for a certaine, that on the day thou goest out,
 and walkest abroad any whether, that thou shalt surely dye;
 And thou saydest unto me, the word that I have heard is good.
 Why then hast thou not kept the Oath of the Lord, and the
 commaundement wherewith I charged thee. And by many
 other places of scripture, as in *2. Chron. 34. 31. 32. Ezra. 10. 5.*
Neh. 5. 11. 12. 13. the subject too, in sundry cases is bound to
 take

* 2. Hen.

5. c. 3. 2.

Ed. 6. c.

Fit. 7. nati

bre. 41. c.

Register

part 2. f.

36. b. 43.

a. 59. a. 95

b. 99. a.

Restall

rehibi-

on.

5
take them; As first in case of fidelity, *Exod. 22. 10. 11.*

Secondly, in case of purgation, *Num. 5. 14.*

Thirdly, in case of holding forth the truth of a mans profession. *Jer. 37. 13. 14. Matth. 26. 63. Act. 4. 7. 8. c. 6. 1. Act. 21. 38. 39.* But by these my reasons I doe desire plainely to manifest, the Oath to be unlawfull, when it is administred, where neither the glory of God is maintained, nor the good of the common-weale, nor our neighbours furthered, but only to the searching out either of a crime suspected against our selves, or pretende against our Brethren, it being never sanctified to that end, I make no doubt but they will please as many as I desire to content and those are good men, for the rest that are gauled, if I rub them unawares, it is but chaunce-meddle.

But justly it may be objected to me, that there are many farre more fitt and able then I to deale in this matter, and since they doe not, it may be thought great arrogancy in mee to intermeddle in the same. *Objection*

Indeed my want of ability, as before, so againe I confesse, and the great plenty of others that are farre more able, I must needs acknowledge, and withall my heart I wish better wills in men added to their skill, then (the Lord knoweth) are to be found amongst us: As for Arrogancy to be imputed to me in this case; Surely I hope there shall not: For (God is my witnes) J only seeke to dischardge my conscience in shewing my reasons why I refuse to take it (which I refuse not any way to putt dishonour upon the Court, but for satisfaction of my conscience) by these my weighty reasons in my weake judgement, that I might not any longer be reported to deny it, because J will not take it, or because I was *Mr. Prinns* Servant, which I have thought requisite to sett downe in writing now after a yeare and a halfe imprisonment, and a Censure, being taken *pro Confesso*, because I would not take it to answer to Articles, which did trench

Answer.

** As the Register told Dr. Wood, who made answer that he dare sweare I would not then take it.*

upon my Masters secrets, which I am bound by Law to keepe
 unlesse in matter of murther or Treason, I was censured at
Lambeth, Feb. 8. 1628. on this wise, first, Fined a thousand
 pounds, good round cost of suit, because (saith the Arch-Prelate)
 it is the Kings suite, excommunicated, & close imprisonment
 not to goe forth with a keeper, till I submit to take the Oath
 which I trust in God, will never bee, it being first against the
Because it Law of God, (which * should be a direction to all Christian
is against Princes, in making of their Lawes) which requires that hee
the Law should not doe that which seemeth good to mens judgments.
of God. But doe only that which God commands us, & that we adde
 * *Fullers* nothing thereunto, neither yet diminish from it, for whose
argument, ever shall breake one of these least commaundements, and
 p. 11. teach men so, he shalbe called the least in the Kingdome of
 Heaven, *Dent. 4. 2. C. 2. 12. 32. Josh. 1. 7. Prov 30. 5. 6. Matth.*
b In his 28. 18. *Gal. 3. 15. Rev. 22. 18. 19. Matth. 5. 19.* For what
Preface to is not expressely taught (saith *b John Bale* in his Apologie, in
the Rea- the Testament of Christ, and contained in the Scriptures
der, f. 9. ought not to be attempted by any Christian man, being no-
and in the thing worth at all, but frivilous, vaine and wicked, but held
Apolog. as the fruites of mens inventions, conjectures and thoughts
it selfe, f. without Christs appointment, ministring nothing to men, but
 26. 57. 88 lyes, corruption, poyson, errour, falsehood, presumption,
 naughtines, abomination, and sinne, and if they be reckoned a
 righteoulnes afore men, they are such a one as the Prophet *Isay*
 speaketh off, *Isay. 64.* as cloathes stained with mens true, and
 the bringers in of them as blasphemous bablers and lyers,
instit. l. 1. (and is alway the Mother of Errour (saith *c Calvin*) though
 c. 5. Sect. it doth not alway breed an heape of Errours:) For no man
 12, p. 13. (saith *d Bale*) shall receive any reward for them at the latter
 d. *Ibid.* day, unlesse it be the reward of damnation, for leaving Gods
 f. 111. Commaundements to doe such idlenes.

God hath declared by the mouth of his Prophet; that hee
 esteemeth them no more then hee esteemeth the vile dirt of
 men, *Mal. 2.* For when they are not of his commaunde-
 ment,

ment, they are no other then mens idle and wicked inventions. ⁷

Therefore *S. Augustine* * in his 46. Treatise upon *John* * *7ⁿ his*
quoted by *John North-brooke*) counselleth us, that if any man *poore-mā's*
wil teach their owne, not to hear them, not to doe after them, *garden, c.*
for such men teach their owne, but not these things which are *11. p. 65.*
Jesus Christs, and upon the 26. *Psalm*. hee saith, that to faine
without the Gospel, is to Fable. *Basil* in his Moralls, 14. chap-
ter telleth vs, that whosoever forbiddeth vs to doe that God
commandeth, or commaundeth us to do that God forbiddeth,
is accursed unto all them that loue the Lord. * *Cyprian* in * *Ibid. c.*
his 1. Booke and 8. Epistle writeth, it is adulterous, it is *11. p. 64.*
wicked, it is abominable, whatsoever is ordred by the rashnes
of Man, that Gods order should be broken.

Ambrose likewise in his 3. Booke and 1. Chapter of *Virgins*,
wisheth us to Iudge that detestable, and abominable, that they
themselves preach which Christ hath not taught, because
(saith he) we justly do condemne all new things which Christ
hath not taught, for Christ is the way to the faithfull.

Chrysostome upon the first of *Aggeus* writeth thus: All other *Ibid. 66.*
things which they seeke out, and invent at their owne plea-
sure, (speaking of Preachers without the authority and testi-
mony of the Scripture (as though they were the Traditions
of the Apostles) the Sword of God cutteth off.

Againe *Cyrill* in his 9. Booke upon *Leuiticus*, saith: There
be two Offices of a Bishop to learne the Scriptures of God,
and by oft reading to digest the same, or else to teach the
people, but let him teach these things which hee hath learned
of God, and not of his owne heart, or by mans understanding,
but those things which the Holy Ghost teacheth.

The Word of God requireth, that an Oath be for the end
of all strife, *Heb. 6. 16.* that every man should sweare in Ju-
stice, Iudgement and Truth, *Ier. 4. 2.* that every man should
love, cherish, defend, and protect, his owne Fame, Life, Liber-
ty, Estate, that we should love one another, esteeme others
bet-

better then our selves, but especially those which are of the Household of Faith, beare one anothers burdens, forbear one another, love (not accuse) our neighbours, as our selves, which is the fulfilling of the Law, and not bite and devour one another least we be consumed one of another. *Gal. 5. 14. 15. 2. 6. 2. 10. Ephes. 4. 2. Phil. 2, 3. Col. 3. 12. 13. 1 Thes. 4. 9.* That we should not beare false witnes against our neighbours (by which commandment (saith *King Henry the 8.* in his necessary Doctrine and erudition for any Christian Man, scene and allowed by the Lords both Spirituall & Temporall with the lower House of Parliament) we are not only forbidden all evill use of the tongue, to the hurt of our neighbours, but also we are commanded in the same all the good use of the tongue, to the benefitt of our neighbours, &c. (so likewise *Mr. Calvin* in the Catechisme upon that comāndment, saith that we are taught by it, not to judge ill, or to speake any words that sound to the reproach of others, but rather to have a good opinion of our neighbours, and to maintaine their good Fame, so farre forth as the truth will beare us.) And when we know any man to doe amisse (saith *King Henry*) we are not to publish his fault to other men to his slander, but rather to admonish him privily betweene him and us, and to seeke his reformation, &c. and generally in all other things to use our tongues in truth to the wealth of our neighbours, &c.

(e) *Eccles.* They also offend against this Commandment, which bee detractours, backbiters, and slanderers, whom the wise (e) Man doth liken to Serpents, that privily bite or sting men behinde, when they be not aware thereof. And surely such Men (whatsoever they pretend) goe not about to heale and amend them that doe amisse, but rather to satisfie their owne malice and slanderous tongues. For like as the Chirurgeon that will heale a wound, doth cover it, and binde it, that it take no open ayre. So if we intend the amendment of our neighbours fault, we must not open it abroad to his hurt, but

we must be sorry and pray to God for him, and so taking him to us, we must privily counsaile and exhort him.

And this loving correction will make him become and take heed, that he offend no more.

But if we tell his faults first to one, and after to another, and chardge every one to keepe Counsell, as though wee had told it to no more, this is no amendment of his fault, but a declaration of our owne, and a reprehension of our selves, in that we utter forth unto others, that thing which we our selves judge not to be uttered.

And surely we condemne our selves therein, for we should first have kept it secret to our selves, if we would not, that an other man should utter the same.

And therefore the Wise-man saith *Eccles. 19. 10.* If thou hast heard any thing against thy neighbour, let it dye within thee, and be sure it will not burst thee.

This and much more saith *King Henry* on that Commandment.

God, he requires not, that any man should destroy or ruine himselfe or them, contrary to the practise of *Rachel*, who though she had stolne her Fathers Idols, and he made inquisition, learching diligently after them, yet she would not accuse her selfe, but prayed him not to be angry, that she could not rise up unto him for the custome of women was upon her, (when indeed she sate upon them) *Gen. 31. 19, 35.*

Of the Hebrew who would not tell *Moyser*, wherefore he smote his fellow, but asked who made him a Prince and a Iudge over them. *Exod. 13. 14.*

Of *Rahab*, who would not bring forth the spies to the King of *Iericho*, but bid them with the stalkes of flax, which shee had layd in order upon the Roofe of her House, and sayd thus to the King: There came Men unto me, but I wist not whence they were; And it came to passe, about the time of the shutting of the gate, when it was darke, that the Men went out, &c. *Ioshua 2. 3, 4, 5.*

Of the men of Iſrael, whom *Saul* adjured, ſaying: Cursed be the man that eateth any food untill evening. But *Jonathan* heard not when his Father charged the people with the Oath, wherefore he put forth the end of the Rod that was in his hand, and dipt it in a Hony combe, and put his hand to his mouth, &c.

Then answered one of the people, and ſaid: Thy Father ſtraightly charged the people with an Oath, ſaying: Cursed be the man that eateth any food this day, &c.

And *Saul* ſaid, draw ye neere hither all the cheife of the people, and know and ſee wherein this ſinne hath beene this day. For as the Lord liveth, which ſaveth Iſrael, though it be in *Jonathan* my Sonne, hee ſhall ſurely die. But neither the man who ſaw him eat it, nor no other among all the people answered him, but left it to be found out by *Lot*.
1. Sam. 11, 24, 25, 26, 27, 28, 38, 39.

Of *Michael*, who let *David* downe through a window, and tooke an Image, and layd it in the bed, and put a pillow of Goates haire for his boulſter and covered it with a cloth, and when *Saul* ſent Meſſengers to take *David*, ſhe ſaid, he is ſicke; And when *Saul* ſent them againe to ſee *David*, ſaying, bring him to me in the bed, that I may kill him; and when they came in, and found the ſame Image in the bed with a pillow of Goates haire for his boulſter; *Saul* ſaid unto her, why haſt thou deceived mee ſo, and ſent away my enemy that he is eſcaped, ſhe answered him, that he ſaid unto her, let me goe, why ſhould I kill thee, when *David* never did, as we may read in 1 Sam. 19. 12, 13, 14, 15, 16, 17, 18.

Of *Jonathan* who though his Father asked him where *David* was that he came not to meate, answered him, *David* earneſtly, asked leave of me to goe to *Betlehem*, ſaying, our family hath a ſacrifice in the Citty, and my Brother hath commaunded me to be there, and now if I have found favour in thy ſight, let me get away I pray thee, and ſee my Brethren, therefore he cometh not to the Kings Table (when he had hid him

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him in the feild) and after that he had perceived his Fathers anger towards him, went out, and by the shooting of three arrowes, gave notice to him, that his Father was angry, that so he might be gone. 1 Sam. 20. 27. 28. to 42.

Of the Man of *Bahuraim*, who had a Well in his Court, whether *Jonathan* & *Achimaa* went downe; And the Woman tooke and spread a covering over the Wells mouth, and spread ground Corne thereon, & the thing was not knowne; And when *Abfoloms* Servants came to her, enquiring where *Achimaa* & *Jonathan* was, she said unto them, they be gone over the broke of Water, &c. 2 Sam. 17. 18 19. 20.

Of *Gebazi*, who though his Master *Elisha* demaunded of him from whence he came, answered and said, thy Servant went no whither. 2 Kings 5. 25.

Of the Prophet *Jeremiah*, who when King *Zedekiah* had taken him into the third entry, that is in the Houle of the Lord; And said unto him, I will aske thee one thing, hide nothing from me, answered, if I declare it unto thee wilt thou not surely put me to death, and if I give thee Counsell, wilt thou not harken unto me. Jer. 38. 14. 15.

Of our Saviour *Christ*, who would not accuse himselfe, nor answer to captious interrogatories and questions, propounded to him by the High Priests and *Pilate*, but put them to their prooffe and witnesses. *Matth.* 27. 11. to 15. *Luke* 22. 67. 68. 69. 70. *John.* 18. 19. 20. 21. 22. 23. 29. 30. 33. 34. 36. 37. c. 19. 9. 10.

Of *St. Steven*, who though hee was denounced to the Preists by subborned men, which are called witnesses to have spoken blasphemous words against the Holy place and the Law, and asked by the High Preist thus: Are these things so, answered Men Brethren and Fathers, the God of glory appeared unto our Father *Abraham*, when he was in *Mesopotamia*, before he dwelt in *Charram*, *Acts* 6. 11. 13. c. 7. 1.

Of *St. Paul*, who though he was asked by the Cheife Capitaine, whether he were not that Egyptian, which had made an

uproare, and lead out into the Wildernes foure thousand men that were murtherers, answered, I am a man which am a Jew of *Tarsus*, a city in *Cilicia*, a citizen of no meane city, *Acts 21. 38. 39.*

Of the *Midwives of the Israelites*, who though they were commaunded by *Pharaoh* when they did the Office of a Midwife to the Hebrew Women, if it be a Son, that then they should kill him, fearing God, did not as the King of Egypt commaunded them, but saved the Men Children alive. *Exod. 1. 16. 17.*

Objection. But me thinks I heare it here objected, (f) that the Com-
(f) *Dr. Co-* mandment was such, as could no way stand with the feare of
zens in his God, there is no Prince to be obeyed, when he commaundeth
Apologie any thing directly forbidden by God; For it is better to obey
for sundry God then man. The Prince is no God, nor yet Gods Lieute-
procee- nant, but a meere man, in that which he commaunded directly
dings by contrary to God. But this oath agreeth with the feare of God,
jurisdictio and the Prince in commanding this is Gods Lieutenant & not
Ecclesiast. mee r man, therefore in this his commaund he is to be obeyed.
part. 3. c. I answer, that this Oath, with the manner and purpose, for
14. p. 207 which it is delivered, is by the morall Law of God and the
Answer. Land (as I shall shew in my 6. reason) forbidden, viz. in the
9. Commandment; where we are not only forbidden the use
of our tongue, to the hurt of our neighbour, but also comman-
ded in the same all the good use of the tongue, to maintaine
their good fame, to the benefit of our neighbours, as I have al-
ready manifested by *K. Henry & Mr. Calvin*, upon that com-
maundment, but by taking this oath, we are forced to preju-
dice our selves, naturall parents, deereft Freinds, and neereft
neighbours to their publike shame, reproach or condemnatiō,
therefore wee ought not to take it, but contemne, dispise, ab-
horre, & kicke at it, as at the filthy dirt under our feet.

Objection. Another objection may be made by *Dr. Cozens*, that when
Dr. Cozens a man upon some sufficient inducement, is brought before a
part. 3. c. Magistrate unto examination, his discovery against himselfe,
5. p. 48.

or

or other, neither by Gods Law, nor yet by mans Law is taken for an accusation unnaturall, but a necessary Confession of truth, whereby God is glorified, sinne punished, & the common-wealth benefitted; Howsoever the party sustaine thereby some touch in his reputation.

Be not ashamed (saith *Ecclesiasticus*) to tell truth for the c. 4. 24. good of thy soule, for there is a shame that turneth a man to 25. honour & grace; and therefore he saith afterwards: Doe not v. 30. 31. gaine say the truth in any the least point, but be ashamed of an untruth, though it proceed from thine ovne ignorance: Be not ashamed to confesse thy sinne, and stop not the course of the flood: And therefore he ought not to refuse to take and performe his Oath.

I answer, first, that there is no other Sufficient inducement *Answer.* whereby a man may be brought before a Magistrate to discover against himselfe or others by Oath any necessary confession, * *Calvins* on, * but where either the glory of God is to bee maintained *Catechism* or the good of the Common wealth or our neighbours furthered *upon the* but by this Oath (as it is now a daies administred) Gods glory *3. Com-* is not maintained, (but the Catholick Faith) nor (seldome or *mandm.* never) the Common wealth or our neighbours furthered, but bewrayed.

Secondly, whereas *Dr. Cozens*, alleageth two places our of *Ecclesiasticus*, viz. c. 4. 24. 25. 30. 31. to prove mans discoverie against himselfe by Gods Law not to be an accusation unnaturall, but a necessary confession.

I answer, that, that which is found in the 24. 30. 31. verses is so farre from stirring us up not to be ashamed to tell truth, that in the first place v. 24. It telleth us that by speech wisdom shall bee knowne, and learning by the Word of the tongue.

Secondly, it counselleth a man v. 30. not to be as a Lyon in his House, nor franticke among his servants.

Thirdly, it desireth a man v. 31. not to let his hand bee stretched out to receive, and shut when hee should repay or give.

Lo here how our Dr. hath overshoot his marke, in stead of butt-arrows he shotteth rovers, and in stead of rovers, butts, for his first arrowes flieth too verses over and hitteth his last marke, which is in no wise speake against the trueth, but bee ashamed of an vntueth, &c. *ver: 25. 26.* and his last flyeth 8: verses over his first marke, which is, Observe the oppertunitie, and beware of evill, and bee not ashamed when it concerneth thy Soule, &c. *v. 20. 21*

Thirdly, Take his profes where they doe lie: as *v: 20: 21 25: 26:* it will make nothing to the purpose for *Ecclesiasticus* speaking of wisedome how that shee exalteth her children, & the like, cometh to advise vs in the *20. v.* observe the oppertunity and beware of evill and bee not ashamed when it concerneth thy soule.

Fourthly, admit to bee as hee alleageth, to wit, bee not ashamed, &c. It will benefit him nothing because it is not the word of God, For if it were, it would not directly contradict some other places in *Ecclesiasticus*, which were notesse then Blasphemy to say if the Holy Ghost had written it, and that this is contrary is apparant by *e: 19. 7.* where *Ecclesiasticus* saith, shew thy secrets nei her to friend nor foe, and if thou hast offended tell it not out, For hee shall hearken unto thee and marke thee and when hee findeth oppertunity hee shall hate thee: *ver: 8. 9.* But more of this in my third reason.

Therefore hee ought to refuse to take and performe his Oath.

Againe, the word of God requireth that every thing should be established by the mouth of two or three witnesses *Dent: 17. 6. cap: 19. 15. Num: 35. 30. Matth. 18. 16. Iohn, 8. 17. 2. Cor. 13. 1. Heb: 10. 28. 1. Tim: 5. 19.* And a man to discover his brothers secrets, is condemned as a fault by the Holy Ghost: For hee that goeth about as a slanderer, discovereth a secret, but he that is of a faithfull heart, concealeth a matter, *Pro. 11. 13.* but whether that be meant of needles slanderous, malicious, and treacherous bewrayings of our Friends,

Freinds, or of other secrets; And not of any judiciall depo-
 sing of our knowledges, when we are brought before a Ma-
 gistrate, I leave it to the judgement of the Reader (and not
 to Dr. * Cozens who interprets it so (desiring them to read
 for their better satisfaction Mr. Ainsworth in his Annotat.
 on Levit. 19. 16.

* In his
 Apologie,
 part. 3.
 c. 14.
 p. 211.

But against this my reason, it may be objected and sayd, that
 by the Lawes of England one witnes is sufficient; I answer (a)
 that the Iurours being all sworne to trie particular matter in
 fact, wherewith the party distant is charged, may wel supplie
 the want of one witnes, being 12 persons indifferent without
 any affinity to either party, and may perhaps know the cause
 in question, as wel as the witnes being of the venue where the
 Iury is summoned.

Objection.
 Answer.
 (a) Fullers
 Argumēt
 p. 12.

Secondly, some may object, that in severall cases in Scrip-
 ture an Oath hath been taken as first in matter of Fidelity
 and goodes put in trust *Exod. 22. 10 11.* Secondly, in mat-
 ters criminall as *Num. 5. 11. to 22.* Thirdly, in Solomons
 Prayer: 1: *Kings 8. 31. 32.* Fourthly, in the holding forth
 of a mans profession *Matth. 26. 63.* Therefore the Oath *Ex-
 Officio*, ought to be taken it tending to purge a man.

Objection.

I answer noe, for first there is a difference to be put in vr-
 ging an Oath.

Answer.

In cause of Fidelity, and in Case of supplication of a
 Crime.

In Case of Fidelity I conceive the Iudge might Lawfully
 require an Oath of the suspected party, whether he were wil-
 ling or noe, for equity requires it, that if goodes be commit-
 ted to a mans trust, hee should either restore them, or put it
 out of controversie by his Oath that they were not lost or im-
 paired in his hands by his default, and in soe doing he sweares
 not to do himself wrong but to do his neighbour right, but in
 Case of suspicion of Crimes I thinke it unlawfully to reveale
 the whole matter vnlesse there bee witnesse brought against
 him.

First,

First^l, in regard that noe man never hated his owne flesh but loveth and cherisheth it (that is in the Cannon-Law) no man is bound to bewray his owne turpitude.

Secondly, Because, it is required **THAT EVERY THING** should be established by the Mouth of too or three witnessles, yet it will bee granted that vpon iust and evident presumptions of so hainous a crime as Treason, they lawfully doe it by Torture, because Magistrates have a power over the outward man of their subjects according to the whole some Lawes, of each Cōmon-wealth, but not by oath, because it is a Worship of God to bee performed by the inward man of the Heart, not as man shall require but as God onely hath directed.

Secondly, I answer that in suspicion of criminal causes (as Murther, Adultery, or the like) the Magistrate may require an Oath if the subject be willing to take it, to purge and to cleare his owne innocencie, but in Case he bee guilty of the Crimes objected I beleave he is not to be vrged to take an Oath, or to purge himself least he should add perjury to Adultery or Murther or accuse himselfe. As put the Case, the woman had beene guilty and refused to take the Oath, and drinke the water I thinke they would not have constrained her to it, as to add periury to adultery, neither would they have put her to death for it, because the Law was expressely, none might bee condemned without witness *Deut. 17. 6.*

Thirdly, as for *Solomons* prayer, I answer that it is no warrant for any Oath to bee given at all, for he prayeth there if a man hath committed a trespasse and an Oath bee laid upon him (not that an Oath shalbe laid upon him) that then the Lord would heare in heaven, and doe and judge his Servants, &c: Therefore it cannot be vrged as a forcible prooffe to take any Oath at all, much lesse this.

Fourthly, I answer that in case a Magistrate adjure a Christian and soe cause him vpon his Oath to beare witness to some Truth of his profession and Religion, though it doe expose

pose him to suffering, if he doe professe his Conscience, yet if he find himselfe prepared to suffer, he may and ought to answer the Truth upon his Oath tendred him, according to the place alleadged, *Mat. 26. 63.* But yet I dare not excuse the Magistrate in this case from prophaning the name of God, by abusing an Oath, to the finding out of that which he pretendeth to be a Crime, though the Innocent Subject being adjured, may safely acknowledge it.

St. *Augustine* in this behalfe saith thus: (b)-If any shall provoke thee to sweare, as supposing (happily) he may thereby be satisfied, if thou shalt sweare touching such a matter which he suspecteth thou hast committed, and (perhaps) thou hast not done it, if in this case (I say) thou shalt sweare, to remove that false suspicion from him, thou dost not sinne, as he doth who provoked thee.

Fifthly, the Oath *Ex Officio* ought not to be taken, though it doth tend to the clearing or purging of a mans selfe, if there were no other reason then this, because it is contrary to the (i) Cannon-Law, and custome of the High-Commission-Court, the one ordering, and the other practising accordingly, the Cannon-Law orders, that the Oath of purgation should be administred where there are strong presumptions and circumstances, but no full legall prooffe of guiltines, and that only after full hearing of the Cause and Sentence given, not before (as the Oath *Ex Officio* is) to purge and cleere the party acquitted by Sentence, not to detect and accuse him, that he may be sentenced, † and it is only voluntary, not coactive, at the parties, not the Judges election, and that in case of Bishops and Ministers, not of Lay-men, when their people shall earnestly require it.

By all which the premisses out of the Word of God with the answers to the Objections made against them, may appeare how contrary this Oath is against the Law of God.

(b) *Aug. Sermo. 11. de decollac sanct. Iohann Bapt. and Mr. Cozens in his Apologie, part. 3. c. 12. p. 169.*
(i) *Gratius. Can. 2. qu. 5. Parkers discourse, part. 2, c. 8, sect. 2. f. 104. † Diaz. c. 140.*

Because it is against the Lawes Secondly, I trust in God my submission will never bee to take this Oath, because it is contrary to the Lawes and proceeding of the Iews yea Romans, which condemne no Man, before they have brought the accusers witnesses and deponents face to face, and heard their accusations, testimonies and defence, as we may see when *Paul* was brought before *Felix*, (he taketh not an Oath of him to accuse himselfe but saith) when thy accusers come I will heare thee: *Acts*. 23. 30. 35.

Festus likewise said. It was not the Manner of the *Romans* to deliver any Man to die, before that he which is accused, have his accusers Face to Face, and have Licence to answer for himselfe concerning the Crime laid against him, *Acts*. 15. 16. 17. 18. *Iohn* 7. 51.

Because it is against the Council of Ecclesiasticus Thirdly, because it is against the Council of *Ecclesiasticus* (which is esteemed by themselves to bee the very Word of God) & Shew thy secrets (saith he) neither to Freind nor Foe, and if thou hast offended, tell it not out. For he shall harken unto thee, and marke thee, and when he findeth opportunity (k) 19. he shall hate thee. If thou hast heard a word against thy 7. 8. 9. neighbour, let it die within thee, and be sure thou shalt have no harme thereby.

(l) 27. 16. And in another place he saith (l) whosoever discovereth secrets, lesseneth his credit, and findeth no freind after his will. 17. 18. 21 Love thy Freind, and bind thy selfe in Faithfulness with him, but if thou bewrayest his secrets, thou shalt not get him againe. For like as the Man that destroyeth his enemy, so is he also that dealeth falsely in the Freindship of his neighbour. As for a wound it may be bound up, and an evill word may be reconciled, but he that bewrayeth secrets, is without hope.

(m) 6. 41. And againe (saith he) m rehearse not a thing twice, and 7. 23. 24. disclose not the words that thou hast heard in secret. So shalt thou be truly shamefast, and finde favour before all men.

Fourth:

Fourthly, because it perverteth the Law and Justice of all Nations, times, and Countries; as is evident by that writing of *Trojan to Pliny the 2. l. 10. Epist. 35.* which is (*sine authore certo propositi libelli nulli criminis locum habere debent, nam & pessimi exempli, nec nostri seculi est*) (n) that without a certaine Author of the Bill exhibited, no accusations ought to have place, for it is both a thing of very ill Example, and not the manner of these times.

According to which direction is that of *Concil. Lataranensi sub. Innocentio 3. c. 8.* quoted by (o) *Dr. Andrew Willet.* 'De- bent presens esse is, contra quem facienda est inquisitio, &c. Hee ought to be present, against whom inquiry is to be made, and the severall points and articles, which are sought into, must be declared, that hee may have power to defend himselfe. And not only the words of the Accusation, but the persons also must be published, that it may appeare, what & by whom every thing is reported: it shall also be lawfull for the party accused, to take exceptions and make replication.

And all this would be done least by suppressing names, men should take occasion to defame others, and by cutting off exceptions, they should not be afraid to sweare falsely.

Fifthly, because the said Oath is contrary to the Law of Nature it selfe. For (p) *Natura est conservatrix sui:* Nature is a preserver of it selfe.

Sixtly, because it is against the Common and Statute Law of the Land, and hath been so adjudged. As appeares first by that Statute of 25. Ed. 3. c. 4. which prescribes, that from henceforth none shalbe taken by Petition or suggestion made to our Sovereigne Lord the King, or to his Counsell, unlesse it be by Indictment, or presentment of good and Lawfull men, where such deeds be done, in due manner or by proces made by writ originall at the Common-Law, nor that none be put out of his Franchises, nor of his freeholds, unlesse it be duely brought into answer, and forejudged of the same by way of Law.

C 2

Common-Law of this Land.

Because it perverteth the Law and Justice of all Nations. (n) Par- kers dis- course a- gainst the Crosse, part. 2, c. 8. Sect. 2, p. 106. Fuller p. 12. (o) Synop. Papis- mi. 7. gra. Comm. Qu. 2. f. 374. Because it is aga- inst the Law of Nature it selfe. (p) Fuller p. 12. act. of Ari- stotle. Because it is aga- And inst the

And if any thing be done against the same, it shalbe redressed and holden for none.

Secondly, by the Statute of 42. *Ed. 3. c. 3.* which concludes, that to eschew the mischeifes and damage, done to divers of the Comons, by false accusers, which sometimes have made their accusations more for vengeance and singular profit, then for the profit of the King, or of his people, of which accused persons some have been imprisoned, and others caused to come before the Kings Counsell by wirt, and otherwise upon greivous paine against the Law, it is assented & accorded for the good government of the Commons, that no man be put to answer without presentment before Iustices or thing of record, or by due proces, or by some writt originall, according to the Law of the Land, & if any thing from hence forth be done to the contrary, it shalbe voyd in Law, and holden for Error.

Thirdly, by the Statute of 25. *H. 8. c. 14.* which recites, that it standeth not with the right order of Justice, nor good equity, that any person should be convict and put to the Losse of his Life, name, or goods, unlesse it be by due accusation and witnes, or by presentment verdict, confession, or proces of our Law, since by the Law of the Realme, for Treason committed to the perill of the Kings most Royal Majesty, upon whose safety dependeth the whole wealth of this Realme, no person can no way be put to death, but by presentment, verdict, Confession, or proces of our Law, wherfore it is not reasonable that any Ordinary by any suspicion, conceived of his own fantacie, without due accusation or presentment, should put any subject of the Realme, to the infamy or slander of Heresie, to the perill of his Life, losse of name, or goods, in consideration wherof, it enacts, that every person, or persons, being detected thereof by two lawfull witnesses at the least to any of the Ordinaries of this Realme, having power to examine Heresies, shall and may after every such accusation and presentment; And not otherwise, nor by any other meanes, be cited, convicted,

vented, arrested, taken or apprehended by the said Ordinaries, or any other the Kings Ministers and Subjects whatsoever.

Fourthly, by the Statute of 2. H. 5. c. 3. which enacts, that for as much as divers of the Kings leige people, be dayly cited to appeare in the Spirituall Court, before Spirituall Iudges, there to answer to divers persons, as well of things, whereof the Counsels pertaineth to the court of our Sovereigne Lord the King, as of matrimony & Testament, and when such persons be cited appeare, & demanda a Lible of that, that against them is surmised, to be informed to give their answer there, or otherwise purchase a writ of our Sovereigne Lord the King of Prohibition, according to their Cause, which Lible is to them denied by the said Spirituall Iudges, to the intent, that such persons should not be aided by any such writ, against the Law, to the great dammage of the persons so impleaded. That therefore from thence forth the Lible should be granted and delivered to the party, without difficulty, and in case it be refused, a Prohibition lies upon this Statute.

From this Statute may our learned * *Dr. Cozens* learne & know that a Law doth of necessity require Articles to be shewed to the cited persons, before they resolve, whether they will take their Oath or not: and not plead ignorance any longer, least he verify that old Maxime, live and learne, and dye a foole.

* In his
Apologie,
part. 3, c.
15, p 216.

Fifthly, by the Statute of 1. Eliz. c. 1. (which erects the High-Commission the title and intent of which Statute is the restoring to the Crowne the Ancient Iurisdiction over the Ecclesiasticall Spirituall State, and the abolishing of al forraigne Iurisdiction repugnant to the same, enacts, that no man shalbe indicted, or arraigned for any offence against that Law, but by two witnesses at the least, and that face to face, if they be alive, or within the Realme.

Sixtly, by the Petition of Right 3 *Caroli*, which resolves, that no man be hereafter called to make answer, or take such Oath, or be confined, or otherwise molested or disquieted, concerning the same, or for refusal thereof.

By all which Statutes it is clearly resolved, that no man ought by Law to be forced by Oath, or answer to Articles to accuse himselfe in any Criminall causes, which concerne either his Life, Liberty, Losse of goods or freehold, but ought to be convicted by witnesses, presentment, or the verdict of 12 Men upon Oath, or by his owne voluntary confession, without Oath or Coaction, nor answer before he hath a Coppy of the Libell, or Articles against him, granted and delivered to him, without any difficulty, that so he may either demurre, answer or bring a Prohibition, as his cause shall require and advise with his Council for his best advantage and security as he doth in all Courts of Law and equity.

(g) *Fullers* (g) That the power to imprison subjects to fine them, or to
Argument: force them to accuse themselves upon their owne enforced
 p. 3. Oaths, there being no accuser knowne, is no part of the an-
 (r) *Fullers* cient Ecclesiasticall Jurisdiction, nor used in England by any
 p. 3. 9. (r) Spirituall Jurisdiction, before the Statute of 2. H. 4. c. 15.
Parkers which was procured by the Popish Prelates in the time of
discourse darknes, to the great mislike of the Commons, for the punish-
 part. 2. c. ment of the Lollards, that is to say of true Christians, and
 3. sect. 2: pressed by Sr. Thomas More as a reason thus, for the mainte-
 p. 107. nance of the suit *Ex Officio*, (s) that if it were left, the streetes
 (s) *In his* were likely to swarme full of Heretickes, and the Catholike
Apology Faith minish, but if it be kept, then would the Catholike
 f. 219. Faith be maintained, and Heretickes decrease. Therefore not
 226. and unjustly is it called by (t) Mr. Fox the Statute *Ex Officio*, a
in his de- cruell Law, a bloody Law, a Law of *Maximinus*: The Statute
bellation of 25. H. 8. c. 14. in that blind time brandeth it with this mark,
of Salem ‡ that

© By *ſace*, part. 2. c. 15. f. 2. 15. 16. 19. 23. 40. 41. 65. 67. 72.

(t) *Acts and Monuments*, v. 1. p. 681. 682.

‡ See Dr. *Cozens Apologie*, part. 3. c. 6. 7. p. 75.

that the Ordinaries of this Realme were went to examine upon captious Interrogatories.

Besides it standeth not with the Justice of our Land, that any person should be convict, or put to the Losse of his Life, goods or good name, but by due accusation and witnes, or by presentment, verdict, confession, or proces of Outlawry.

How can it be reasonably (then) that any Ordinary by any suspicion conceived in his owne fantasy, without due accusation or presentment, should put any subject of the Realme unto any infamy or slander of Hereſie, to the perill of Life or Losse of goods, or good name, &c. and this Oath hath also been (v) adjudged unlawfull, because *nemo tenetur prodere se-
ipsum*, no man is bound to bewray himselfe, in things which concerne his Credit, Liberty, Life, or Forfeiture of his estate. (v) *Dier.
282. p. 51
Crompton
182.*
Mich. 18. Eliz. one * *Hind* was convented before the High-Commissioners for Simony, and committed for refusing to answer upon Oath, to accuse himselfe, and upon a *Habeas Corpus* brought by him in the Common-plea, he was delivered after solemne debate, the Court adjudging the imprisonment unlawfull in this case, because no man is bound by Law in a case of Crime or scandall to accuse himselfe. (w) And (w) *Ful-
lers argu-
ment, p. 11*
as the devise of the Devill, to take an Oath in a mans owne cause, to throw the Houses of poore men into Hell by *St. Edward Cooke*, in his Reports in *Slades Case*, 4. Report f. 95.

Against this my 6. Reason, the maintainers of the sayd Oath, doe make many objections meet to be viewed and breisly, as may be, answered. It may not be looked for, that I should touch them all; because not many of them are come to my hands; Neither (if they were) will leisure wel serve) nor if it would serve, were it worth the while, they be so frivolous, but especially because they are so manifold, so variable, and intricate with such contradictions one against another, and of the same man against himselfe; as it is a worke of more matter, to set downe certainly what they object against it; then

then to confute them; But it is meet, that errours should so be viz. divided into many heads, one of them bissing against anothe: Howsoever they be tyed together by the tayles, like *Sampsons Foxes*, to set both Church and Common-wealth on fire, that they may the better raise up the Beast and his Image to be worshipped.

So neere as I can collect them their Objections be of three sorts.

Objection. The first is by *Dr. Cozens*, (x) that this Oath is not contrary to the Common-Law. For the *grand Jury* have their Oath given to enquire, and present *their owne, their fellowes, and others faults*, that they have in chardge.

(x) *In his Apologie*, part. 3, c. 5, p. 40. And yet to avoyd this inconvenience, I trust it will not be thought meet, that all enquires by Oaths, should be therefore given over.

† *In his moderate answer to Mr. Burton*, p. 13, c. 1. *Cozen Apologie* part. 3, c. 15, p. 216. Which objection of *Cozens* is answered in an objection of † *Heilyns* taken out of himselfe thus: The grand Inquest taking an Oath before the Iudges, that they shall diligently enquire, and truely present *all Offenders*, against any such point as shalbe given them in chardge, and yet the chardge not given till the Oath be taken.

Now, to them both I further answer, that that doth not prove the Oath *Ex Officio*, to be the practise of the Common-Law, for the Jury they sweare not to accuse themselves, nor their neighbours, (as *Dr. Cozens* would have them) but when the concealement thereof may tend to the prejudice of the publique (as a man doth by that) but all offenders (as *Dr. Heylin* saith) that is, against the King, and in things to be executed by them, not upon them.

Objection. The second Objection is made by (y) *Dr. Heylin* and (z) (y) *ibid.* *Dr. Cozens*, concerning the advice of Councell, to draw up their answers, & it containes 3 branches; first, an inditement (z) *Part.* at the Common-Law, upon Life and death, there is no Councell given the party to draw up his answer.

51.

Second-

Secondly, in proceedings in the Star-chamber, Chancery and Court of Requests; how ever they commence suite there by Bill and answer, yet when they come to Interrogatories, the parties first take an Oath, to answer truely to the points, and then the Interrogatories are proposed unto them peece by peece in the examiners Office, and that in the Chauncery, though the proceedings (for the most part) bee moved not to any publique punishment, but for the private interest of the party, nevertheles many Bills of complaints be there put up against defendants, wherein sundry their lewd practises and misdeameanors criminall be deduced and set forth, and yet must the defendant make perfit and particular answer there-
 ro, upon his oath, which proceeding they drew from the civill Law. For that Court being here in time and nature the first could not take light from other Courts of the Common-Law, from some other, that was both before it and them.

And in the Court of Star-chamber, the proceedings are against Crimes criminally moved by way of enquiry, yet is the defendant there, to answer upon h's corporall Oath, not only to the Bill preferred against him, but to as many other (perhaps sometimes even crosse Interrogatories) as the Counsell of the Plaintiffe shall devise.

If then it be both equall and Lawfull in the Star-chamber at the prosecution even of a private person, to examine the defendant upon his Oath, for discovery oft times of faults and misdemeanors even openly done and committed, and so the more easily to be proved by witnesses, and where the punishments are usually corporall, and otherwise farre more greivous, then be inflicted in any Court Ecclesiasticall.

Then how can it bee thought unreasonable; whereas the Office, duety and chardge, layd upon the Iudge, are the only excitors and causers of Prosecution; and where Canonick penance is inflicted; and neither ther their greatest corporall paine is so greevious, nor their fines so deepe,

and yet many of the crimes are as bainous towards God, and as secretly and closely committed and plotted, as any Crimes are, that be punishable before their Lordships in that most Honourable and sincere Court of Star Chamber.

Thirdly, the third branch is, besides concerning the High-Commission, it hath not thought fit to admitt of Councell, for drawing up an answer unto the Articles, the better to avoyd delays, and that foule palliating of Schismes and Errours, which might thence arise.

Answer. To the first branch I answer, though the party indicted hath no Counsell given him to draw up his answer, yet he hath some knowledge of the indictment by reason of his Imprisonment, and so may frame his answer before hand, but in the High-Commission-Court, though a man be brought up by a Pursevant, or lyeth in Prison (as I doe) he hath no knowledge for what he is brought up, or imprisoned, then for not taking the Oath, and so cannot frame his answer.

Answer. To the second branch I answer; first, in the words of a late learned and religious wel-wishing Gentlemen, that the argument is a meer *nonsequitur*. For though the Chauncery, Exchequer-Chamber, Court of Wards, and Courts of Requests enioyne men in civill causes only concerning the rights and properties of goods, and such like to answer to English Bills upon Oath, yet they cannot doe it against, as hath been adjudged, and though they use sometimes in cases of contempts, and of them alone to examine men upon Oath, to Articles criminally objected against them, yet this is extra-judiciall, not warranted by Law, and the parties examined, may lawfully refuse such Oath, and put the Court or parry, whom it concernes to prove the cotempt by witnesses (and admit as

* In his
Apologie,
part. 3, c.
p. 51.

* Dr. Cozens saith, that the Court of Chauncery drew his proceeding upon Oath from the civill Law.

Whence I pray had the civill Law its originall. Why even from the Pope, and he from the Devill, as shalbe proved in the following reasons, which ought of all Christians to be abhorred,

horred; If then neither the Chauncery, or any other Court of Justice, but the Star-Chamber, can examine men criminally upon Oath, I may better conclude, that the High-Commissioners cannot doe it, because no other Courts else, but the Star-Chamber can or doe ordinarily use it.

And where as *Dr. Cozens* further argueth, that they in the High-Commission may doe it, because the Star-Chamber doth it, whereas the office, duety and chardge laid upon the judge are the only excisers and causers of prosecution, &c.

I answer secondly, not so, the one Court being civill, the other Ecclesiasticall, both in respect of causes and proceedings; the one kept only by an arbitrary Commission; the other absolute by Act of Parliament. *Answer*

And if this be a good Argument the High-Commissioners may (would I could not say their * agents doe) as well argue * *Dr. Cozens* in his *Apology* that the Star-Chamber adjudgeth men to the Pillory, to loose their eares and the like, and may punish all forjuries, perjuries, routs, riots, conspiracies, trespasses in parkes, subordination of perjury, and the like, therefore the High-Commissioners may doe it. *part. 3. c. 5. f. 42. 43. 44. 45*

I am sure they ought not to argue thus. Shall the Lords of the Star-chamber argue thus: The High-Commissioners may hold plea of all Ecclesiasticall Censures; *Ergo*, we may doe it?

If the Prelates will not grant this consequence, as I presume they dare not, I may by the same, or farre better Reason deny to grant the other.

If we may beleieve *Mr. Andrew Melvin*, who in his excellent *Anatomy of the High-Commission*, printed 1620. proves at large, that *Bishops and Clergymen*, neither as they are such, nor yet as *High-Commissioners*, or *Temporall Officers* (to wit Lords of the Councell, Lord Treasurers, Chauncellours to the King, by verue of which names *Dr. Cozens*, c. 6, part. 3, p. 53. doth argue, that the urging to put in answer upon corporall Oaths

taken (albeit the matter in some degree happen to be criminal) can hardly be construed to be against equity, can or ought to commit or imprison any man, because these being branches only of Temporall Magistrates Jurisdiction, are expressly prohibited all Bishops and Ministers by our Saviours, *vos autem non sic*, Matth. 20. 25. 26. both directly and indirectly, the inhibition being a universall negative, reaching to the persons as well as to the functions of Ministers and Prelates, whom Christ would not have to intermeddle with any temporall Office or Jurisdiction, belonging to the temporall Magistrate, no more then he would have temporall Magistrates, to administer the Apostles, or Ministers Office.

But to give a more punctuall answer. The Statutes of 37. Ed. 3. c. 18. 38. Ed. 3. c. 9. 16. R. 2. c. 2. 31. H. 7. c. 1. 5. Eliz. c. 9. 14. if not the Canon-Law it self authorize the Star-chamber to fine, imprison and inflict other corporall punishments in such cases, as are expressed in these Acts As *Mr. Crompton* in his Jurisdiction of Courts. *Tit. Court de Star-chamber*, fol. 29. 10 4. at large demonstrates. But no Statute, much lesse the Common Law, gives the High-Commissioners any such power.

Thirdly, the Star-chamber being a temporall Court for the punishment of the highest Temporall Offences, which are not capitall, may inflict temporall Censures and punishments (as Fines and imprisonments) on delinquents, yet they cannot impose Ecclesiasticall.

But the Commissioners (being only Ecclesiasticall Judges, in Ecclesiasticall causes, punishable by no Common or Statute Law, but by Ecclesiasticall Censures only) cannot inflict temporall punishments, as Fines and imprisonments, no more then the Star-chamber can Ecclesiasticall Censures, for temporall offences, much lesse then both Temporall and Ecclesiasticall punishment for one and the selfe same Offence, which no Court of Justice elle can doe.

Fourthly,

Fourthly, it is true, that the Star-chamber useth to examine men in criminall causes upon Oath, and men are there bound, to put in their answers upon Oath, to the informations and Bills exhibited against them.

But then we must consider, first, that no other Court of Justice else can or doth use it, but the Star-chamber only.

Secondly, that the Star-chamber Iudges have authority by the Statutes of 3.H.7.c.1.21.H.8.c.20. which give them expresse power, to call delinquents before them by writ, or privy-Scale, and them and other by their discretion, by whom the truth may be known; To examine, where the Iudges in their discretions shall thinke meet.

Notwithstanding some Iudicious men have conceived, that this clause authorizeth not the Star-chamber to examine delinquents criminally upon Oath, to accuse themselves, it being contrary to the Common, Statute, Canon-Law, Scripture, and the proceedings both of the Iewes and Romans, but only without Oath, and none but witnesses only upon Oath.

But let this be interpreted, as it may be, yet the Statute of 1. Eliz. c.1. gives the High-Commissioners no power at all, to administer any Oath, no not of Supremacy prescribed by it, much lesse to examine any Man at their discretions upon Oath for any Ecclesiasticall Offence, there being no such clause as this in that Act.

And by the Canon and Statute-Law Ecclesiasticall Iudges can administer an Oath to none in any criminall or civill matters, but only in cases of Matrimony and Testament.

Therefore the High-Commissioners have no Law, nor couler of Law to administer Oaths to men, to answer criminall Articles to accuse themselves, though the Star-chamber hath.

30
Thirdly, in the Star-chamber no man is forced to take an Oath, as soone as he appeares to answer to the Bill, or information exhibited against him, or to his Articles framed on them, before he seeth the Bill, or the chardges therein contained; neither is he denied a Copy of them, by which to frame his answer, nor proceeded against, without any prosecutor assigned; neither is he forced to answer, what he thinks or beleeves, or how he likes or dislikes things in his judgement, or to detect and accuse others; But upon his appearance he hath Liberty to take out a Copy of the Bill and complaints against him, to carry to his Counsell, to demurre in Law thereto without Oath, if there be cause; Or otherwise to plead a generall not-guilty, and so put the prosecutors to their proofes by witnesses, without any selfe-examination upon Articles, or else to put in such a particular answer, as his counsell shall advise and direct, upon the putting in whereof, he only takes an Oath, that it is a true answer; And to give a true answer to such Articles, as he shall be examined upon, concerning the chardges in the Bill (being alwayes matter of Fact, not thoughts) which hee knowes and adviseth upon before hand, with his Counsell, which Articles, comprissing nothing, but what is contained in the Bill (else the party may demurre and refuse to answer them) hee needs give no other answer to them, then what hee hath given before to the Bill by advise.

And whereas *Dr. Cozens* urgeth this as a motive or reason that it should not be thought unreasonable in an Ecclesiastical Court to urge men to sweare, seeing their Fines bee not so deepe there as in the Star-chamber.

Answer.

I answer fifthly, that the Dr. hath in this particular fared like a guest, that maketh his reckoning himselfe without his Host, and therefore he must be faine to reckon againe, for I shall now bring in one penny more into his reckoning, which is this: The High Commission seeing that I would not take my Oath, toke me *pro Confesso*, and censured me, Feb. 8. In which

which censure they fined me a 1000. p. good round costs of suit.

The Honourable Court of Star-chamber seeing that *Mr. Wharton* and *Mr. Lilburne* would not take their Oaths, tooke them *pro Confesso*, and censured them, *Feb. 13.* and in their censures fined them 500. pounds a peece.

Lo here is the penny; that *Dr. Cozens* misreckoneth and faileth in, therefore his pitcher will hold no water.

To the third branch of this third objection, I answer, that the High-Commission in thinking it not fit to give a Copy of the Articles, that the defendants may have advice in drawing up their Answers, sheweth the difference that is between it and all other Courts in point of Justice. All Courts allowing Men a Copy of the Information, Bill and Declaration, that they might have the advice of Counsell, in drawing up of their answers to their best advantage and security, and yet thinke it not a meanes of delay in causes.

The third objection against this my reason is concerning the not knowing of accusers made by *Sr. Thomas More* thus, (a) In his (a) that it is not contrary to the Common-Law in this respect neither; For if a man bee indicted at a Session, and none evidence given openly at the barre, as many be, and many may well be. For the Indictours may have evidence given them a part, or have heard of the matter ere they came there, and of whom be they not bounden to tell, but be rather bounden to keepe it close, for they be sworne to keepe the Kings Counsell and their owne, shall then the party that is indicted bee put to no busines about his acquittale? And who shall tell him there the names of his accuser, to entitle him to his writ of conspiracy.

't Is answered, that the prohibition of opening of the Counsell in this case is only to be understood of their owne Counsell among themselves, after that they be sworne, not for opening of the names of them, that gave them information before they were sworne, I know no prohibition.

And

And if they will not shew their names, they be not bounden to doe it, for they bee not bound to helpe the party to his writ of conspiracy, but as they list to doe in conscience.

So that to conclude this maine reason, these their 3 Objections against this Reason of proving the Oath *Ex Officio*, not to be against the Canon and Statute Law, are neither reasonable; nor, any other reasons of theirs used against it, are of any force or weight; And therefore, though no further confirmation had been used, the Oath would have been unlawfull and unjustifiable; which is now (as you have heard) otherwise also manifoldly proved.

Because it is against the Ecclesiasticall Law.

Seventhly, because it is against the Ecclesiasticall Law, as appears by the 39 Article of our Church, which condemnes all vaine and rash swearing, and all swearing before a Magistrate, unlesse it be in a cause of Faith and Charity, and done according to the Prophets teaching in Justice, Iudgement & Truth, (which we cannot doe when we take this Oath, being to answer expressely to them, for if not expressely then hee hath not sworne in Truth, if expressely, then not in righteousness, because it is to the injury of himself, or his neighbour, not in judgement, because he hath sworne both in rashnes, and in *†* Prophanes; In rashnes, when a man finds himselfe pinched by his Oath, that he cannot be releived by the Law; In Prophanes, for it is the Prophanation of an Oath, to abuse so holy a worship of God to an end, to which God never sanctified it, as to the searching out either of a Crime suspected against our selves, or pretended against our Brethren.

† Calvin Instit. l. 2, c. 8. p. 150 Sect. 25;

And what can be more vaine or Rash, then to sweare to answer to Articles, which we have neither seen, nor know what matters they containe, or what Charity is it to force a Man, to accuse, detect, defame himselfe, or others, to his or their ruine, or what Iustice can there be in this, to violate all these rules of Iustice, to make a man his owne accuser and be-

betraye in enforcing him to sweare to answer such Articles, * *Heylin* p. 14. Co-
 which the Law perchance allowes him to demurre to, and * when as the Church can not judge of hidden things they
 belonging to God, but things revealed to Men, *Dent.* 29. 3. c. 9. p.
 29. 113.

But some may object, (b) that although vaine and rash swearing is condemned by the 39 Article, yet it resteth to bee proved, that taking of an oath, to answer the points proposed, doth come within the compasse of rash swearing. *Objection.* (b) *Ibid.* *Heylin*, 6. 1. p. 14.

For howsoever men are sworne aforehand in the proceedings of that Court, (speaking of the High-Commission) to answer truly to the things objected when they come to heare them, yet they are never sworne to answer to them before they heare them.

I answer, that to swear to make full and true answer to all such articles, as are or shalbe exhibited against them must needs be a meere rash, brutish, inconsiderate Oath, first in regard it is voyd both of righteousness and judgment, for we are in all legall probability, more likely to answer falsely or fraudulently then fully and truly. *Answer.*

Secondly, in regard that to sweare in vaine is to break the third Commandment; and they sweare in vaine (saith *King Henry* the 8. and so by him all the Lords, both spirituall and temporall in his afore said necessary Doctrine and crudition, for any Christian Man upon that Commandment) that sweare without Lawfull or just cause, for that they take the name of God in vaine, although the thing which they sweare bee true, &c. they also doe take the name of God in vaine, which sweare any thing, that is true or false, and doe not afore well examine and discusse, whether it be true or false, &c.

And all they as sweare to doe things unlawfull, not only offend in such swearing, but also they much more offend, if they performe the thing that they doe sweare.

E

They

They also breake this commandement, which make any Oath contrary to their Lawfull oath or promise made before, so long as their promise standeth in strength, which in no wise doth, if it be contrary to the Lawes of God, or to the due obedience to the Princes and their Lawes (now if a man by taking this vaine and rash Oath doth breake this third Commandment all these severall wayes, and shall not be found righteous, for his House shall be full of Plagues, *Eccles. 23.11.* how doth it behove every Christian Man carefully to consider the taking thereof. They also breake this Commandment, which by rewards, or faire promises, or by power or feare, doe induce or constrain any Man to be perjured, (liable to which breach are all *they who ever they be*, who by rewards, faire promises, power, and imprisonment, doe induce and constrain Men to take this Oath, which they can never performe, as God requireth by *Jeremiah. Jer. 4. 2.* and for men to doe that which God never required, is but foolishnes.

Because it is fitter for brute beasts than men Eightly, because to sweare to answer to Articles before they see them, is fitter for brute beasts than men (if they could either sweare or answer) as hath been resolved so to bee by *Beasts the Hortulanus, Florentianus*, and other Orthodoxall Bishops and men. Ministers of Affricke, assembled together before the Commissioners of King *Lounerichus*, when they urged them to sweare to a certaine shedule, before they had read and perused it in these words:

Nunquid Bæta nos irrationalia sumus, &c.

Vandalica What are we unreasonable brute Beasts, that we should easily or rashly sweare, not knowing what the charter contains.

Crosse, Ninthly, because it is not Honourable to a Christian name for Christians to traduce one another to publique infamy.

part. 2. c. 8. Sect. 2. jury.

Because it is not Honourable to a Christian name,

Tent-

Tenthly, because it is against the Canon and Civill Law, *Because it*
 which saith that a man is not bound to answer upon his Oath, *is against*
 if the thing be secret (d) because, *nemo tenetur, seipsum accusare the Canon*
vel prodere, sine proprium turpitudinem revelare. Law.

And another Canon saith thus, (e) we speake of sinnes ma- (d) *Sc Dr.*
 nifested; but as for meer secrets, God (alone) is he that know- *Cozens*
 eth them, and will judge them. *Apology,*

And one reason hereof is, (e) because meere secret sinnes *part. 3.*
 need not be published, but are to be left unto God alone: *c. 9. p. 113*
 generall Inquiries (as at visitations the Law prescribeth this (e) *Urba-*
 forme of Oath) to be taken by them, who are to (g) denounce *nus 2. c.*
 and present, viz. touching such matters as they know and *embuscant*
 believe (excepting alwayes crimes meerly hidden) they shall *dist. 32.*
 say the full truthly and nothing but the truth: In which respect (f) *Arg.*
 it is sayd, that if an officer of a Towne by prescript of some *6. qu. 1. 6.*
 statute, be to denounce all misdemeanours committed in that *omnia.*
 Towne, upon a greivous punishment otherwise to be inflic- *1. Reason.*
 ted upon him, yet is he not thereby bound to present any se- (g) *Equa-*
 cret offence committed by himselfe. Another reason thereof *liver, cl. 1.*
 is; that a Iudge may not Interrogate judicially, but where *de accu-*
 he is led there unto by good equity, but there is no equi- *sat. and*
 ty to enquire of faults that are absolutely secret and hidden, *Dr. Co-*
 yet there be certaine Cases, which are excepted out of this *Zens, part.*
 rule (saith Dr. Cozens, the first is when the hidden crime, *3, c. 9. p.*
 is such as doth (by Law) hinder the execution of function ec- *114.*
 clesiasticall, or the retaining of a benefice, as simony Irregu-
 larity, or such like, and the reason is because the parties *2 Reason.*
 owne good and safety of conscience, is perjured; Least *Ibid. Co-*
 hee should wrongfully live upon, and spend that which *Zens, p.*
 belongs indeed and right to another, and not unto him *114.*
 selfe.

The second exception of the aforesaid rule, touching
 the urging to reveale secret faults, is; when as by con-
 cealing of the offence, great perill doth grow to the
 Church, as in Heresie, and dilapidating or spoile and

wast of an Ecclesiasticall living.

(b) *Alph.* Against this Oath, a *Canonist* writeth thus: (b) Seeing God
villag. alone doth know, and is Judge of thoughts meerly secret, and
lib. Pract. that each man is bound to preserve his owne good name, ac-
can. 1. c. 5. cording to that of *S. Augustine*, viz. that man is cruell, who is
conclu. 1. carcles of his good name; It doth thereupon follow, that if
nothing at all be proved by the Accuser; that then a
Man is not bound to confesse any thing against him-
selfe.

(i) *Diaz.* And another to like purpose, (i) albeit when the Iudge
c. 140. 9 proceedeth *Ex Officio* and the Crime is not fully proved, hee
may enjoyne purgation unto the defendant; yet is hee not
bound to doe it at the petition of him, who voluntary offred
himselfe to be *promotor officij*, but it is otherwise, whe a neces-
sary promotor, who is assigned by the Iudge, doth make such
petitiō (nevertheles saith * *Cozens*, no other corporall violence
then to be declared for convicted, to be suspended, or other-
wise to be proceeded against; is to be used to wring out his
assent unto such Oath.

(k) *Clar.* *Julius Clarus* is also against it, for (k) to proceed (saith hee)
in pract. by inquisition, is not to make the party by Oath, or examina-
Crim. qu. tion, to be his owne accuser, but to receive information and
3. witnesses against him.

(l) *Gratiā.* *Stephen* the first, a Bishop of *Rome* speakes against it thus
2. *qu. 4.* (l) publike crimes are committed to my judgement upon the
c. consul- parties willing confession, or upon prooffe by witnesses,
misti. but those that are hidden and unknowne, are to be left
(m) *Grā* to him, who only knoweth the hearts of the Children
tian. c. 2. of men.

qu. 5. c. 3. Againe, the Canon Law (m) requires witnesses and accu-
qu. 9. can. sers face to face, to convict any man of any Crime, without
5. *qu. 20.* forcing men to accuse themselves, either upon Oath, or an-
can. 11. qu. swer to Articles, and if witnesses and accusers faile the
5. *c. 15.* party, by the Canon Law is acquitted.
qu. 5. 6.

And

And our English Canonist *William Lindwood* determines positively (n) that from the beginning when a generall Inquisition is made in visitations; *Non debet exigi juramentum, &c.* (n) *De jure jurum. l. 2. c. evenit. fol. 80. b.* No Oath ought to be exacted, by which any one may be constrained to detect an other mans secret sinne and offence.

Therefore doth *Aquinas* himselfe very gravely resolve thus: (o) *Cum quis secundum ordinem juris, a iudice interrogatur, non ipse se prodit, sed ab alio proditur; dum ei necessitas respondendi imponitur per eum, cui obedire tenetur:* That is, when a man according to the rule of Law is interrogated by the Iudge, hee 13. p. 194. betrays not himselfe, but is betrayed by another; since that a necessity of answering is laid upon him, by such a one whom he is bound to obey.

Eleventhly, because it is contrary to the Resolution of the Commons House of Parliament, & hath oft been complained of *Stowes Chron.* against, as intollerable greivances, pressures, contrary to all Law and Iustice, (p) as by name in the 23. H. 8. that the Commons declared themselves to be so grieved, with the cruelty of the Ordinaries that called men before them *Ex Officio.* *Because it is contrary*

For the Ordinaries would send for men, and lay accusations to them of Heresie, and they were accused, and lay Articles to them, but no accuser should be brought forth, which to the Commons was very dreadfull and greivous for the party so assited, must either abjure or be burned for Purgation hee might make none, but at length a booke was drawn of all their greifes, and the same delivered to the King by the speaker, who humbly beseeched him in the name of the Commons, to take such direction therein, as to his Highnes might seeme expedient, whereunto the King answered hee would take advice, and here the party accused speake, and in the printed Petition of greivances. 3. *Caroli* aforesaid.

(q) *Apolog* Twelfthly, because it is against the Doctrine of the *Prisail-*
 3.6.14.p. *lianista* (filed by (q) *Dr. Cozens Heretiques*) (r) who did teach
 199.200. their Schollers, not to reveale the Doctrine, which they lear-
 (r) *An-* ned, yea though they were examined therof upon their oaths,
gust in affirmed withall, that rather then faile it were better to bee
lib. de He- forsworne, then to discover it.

resibus. And therefore this saying was rise in their mouths; *Iura,*
perjura, secretaque prodere noli: Swear (say they) yea and for-
 swear your selves too, rather then reveale these secrets.

Thirteenthly, because it is against the Resolution of the *Rhe-*
 (s) *Fulke* *mists* themselves in their Annotations on *Acts 23.v.12.* which
 on the is this: (s) If thou be put to an Oath, to accuse Catholickes, for
Rhemist serving God, as they ought to doe, or to utter any innocent
Testament Man to Gods enemies or his, he ought first to refuse such un-
 lawfull Oaths, but if he have not constancy and courage to
 * *Mr. Ain* doe it, yet is he wished to know, that such Oaths bind not
sworke in at all in Conscience and Law of God, but may and must bee
his An- broken under paine of damnation, for to make or take such
not. on * vowes or Oaths is one sinne, and to keepe them is another
numb. 30. farre greater, as when *Herod*, to keep his Oath, killed *John*
v. 3. *Baptist.*

(t) *In his* And that is in three cases (saith (t) *Dr. Cozens*) wherein the
Apolog. party sinnes, if he tooke his Oath but more greevously if he
part. 3. c. keep his Oath.
 2. p. 14.

First, when the thing by Oath or vow promised to be done
 was at the first taking of it simply, and in it selfe evill, how-
 beir, perhaps not then discerned so to bee. For every Oath
 (v) c. must be made in righteousness; and an Oath, saith (v) *Augu-*
quanto de *stine* (*non est vinculum iniquitatis, vel cuiuscumque criminis*) tieth
jurejuran- no man to doe that which is wicked.

do. Secondly, when that which is promised by such Oath, is an
 hinderance and impediment to a greater good.

Thirdly, when as some unlooked for accident, is discove-
 red, or falleth out afterwards, that was not thought upon be-
 fore; Now, if that in these three cases the Oath cannot bee
 per-

39
performed without crime and impiety then is such performance of the Oath a sinne.

And (w) *S. Ambrose* in this behalfe saith thus: It is some- (w) *Am-
time against Christian duety, to performe a vow promised by brose de
Oath, so Herod offended, which put John Baptist to death, Offic. l. 3.
rather then he would goe backe with his Oath and pro- c. 13.
mise.*

Agreeable to which resolution of the *Rhemists* is that of
Reverend *Bede, Hom. 45.* (quoted by *Bale* in his (x) *Apology*) (x) *fol. 47.*
If it hath chaunced us to bee sworne to any such things, as 58.
the fulfilling thereof, might bring us to a greater evill, being
instructed by more wholesome Counsell, we may breake that
Oath, and rather for the time of need forswear the thing
then for doubt of perjury to runne into a greater inconve-
nience; For *David* swore by his Lord God to slay *Nabal*, a
foolish and wicked Man, and to destroy all that was his. Yet
at the first instance of the sober wife woman *Abigail*, he with-
drew his Anger, put up his sword, & never thought any sinne
in that perjury or breaking of his Oath.

And he shall better please God (saith *Bale* in his Preface to (y) *Ibid.*
the Reader) y) to breake his Oath, then to keepe it, for if wee *fol. 11.*
were like to fall into a greater mischeives then is the brea-
king thereof, he may breake it without danger, as a thing be-
gunne of rathnes.

And concerning unadvised vowes or Oaths, the said *Bale*
writes thus: (z) That they ought of necessity to be broken, (z) *Apoc.*
for not only are they lies in hypocrisie, but also false promises, *leg. fol.*
blasphemies, mockes, dissemblings with God, taking of his *107.*
Holy-name in vaine, and such idle words as the generall
Judge shall call men to a reckoning for, at the latter day.

Therefore I Counsell all men and women, which have
abused Gods Holy name in such idle professions to breake
them, forsake them, repent them, detest them, abhorre them,
utterly despise them, and to spurne at them, as at the most filthy
dirt of the Devill.

When

When *David* had made an earnest vow to slay *Nabal* and all his Men servants, and was by the wisdom of *Abigail* compelled to breake that promise, he never repented the breaking thereof, but lauded God and praised the woman, calling the breach of so unadvised a vow an high preservation of God from doing of most dangerous evill. 1 *Kings* 25.

The 40 Jewes which bound themselves by vow, neither to eate, nor drinke till they had slaine *Paul*, needed no other penance for the breaking thereof, then the Torments of their hungry panches, *Acts* 23.

If they had not taken food till their vow had been fulfilled; For God delivered him, and suffered them to dwell still in their unadvised vowes unfulfilled, and (a) that if they be fashioned after the vaine devises of mens idle hearts, either yet of Antichrist Romish decrees, which is a wicked adversary, and mocker of God, they are to be broken, set at naught, and utterly abhorred, as present poyson, blasphemous mockes, and dangerous fruits of damnation.

Because it is against the Doctrine of the Martyrs. Fourtently, because it is against the Doctrine and practise of the godly Martyrs, ancient and late. Writers, who affirmed (and doe affirme) it a thing contrary to Charity, to the Law of God, of Nature equity Common-reason, and to the Canon and Civill Law it selfe, for Men to bewray and accuse themselves, and therefore refused to take an Oath, or to answer to any Articles to accuse themselves, declaming against *Ex officio* Oaths, and proceedings, as Antichristian, bloody, Tyrannicall, unnaturall, uncharitable, unrighteous, unreasonable, unjust, vaine, yea execrable and Diabolicall, as is evident by Mr.

(a) Fox
Acts and
Monu-
ments, v. i
p. 690.
601.

William Thorpe Martyr, (b) who being examined before *Thomas Arundell* Archbishop of *Canterbury* refused to sweare by on a Booke, or to an Oath, before he was informed what it was, he should sweare too.

And when the Arch-bishop required him to sweare, that in all Dioces where he came, he should forsake and oppose the Sect of the Lollards, and publish them, and their names, and make

make them knowne to the Bishop of the Dioceſſe or his Miniſters, thought in himſelfe that, that was an unlawfull, asking & deemed himſelfe curſed of God, if he conſented thereto, and then ſpeke thus to the Arch-biſhop: Sr. if I conſented to you thus, as ye have heretofore rehearſed to me, I ſhould become an appealer, or every Biſhops elpie, ſent over all England, For, and I ſhould thus put up, and publiſh the name of men and women, I ſhould herein deceive full many perſons, yea Sr. as it is likely by the doome of my conſcience, I ſhould herein be the cauſe of the death both of Men and Women, that ſtand now in the way of Salvation, if I ſhould for the learning & reading of their beleife, publiſh them therefore up to the Biſhops, or to their vnſatiſfied Miniſters.

I know ſome deale by experience, that they ſhould bee ſo diſtroubled and diſeaſed with perſecution, or otherwiſe that many of them (I thinke) would rather chuſe to forſake the way of truth, then to be reviled, ſcorned, ſlaundered, or puniſhed, as Biſhops and their Miniſters now uſe, for to conſtraine men and women, to conſent to them.

But I find in no place in Holy Scripture, that the Office that you would infeoffe me, which accordeth to any Preiſt of Chriffs Sect, nor to any other Chriſtian Man, and therfore to doe this, were to me a full noyous bond to be bounden with and over-greevius chardge.

For I ſuppoſe, that if I thus did, many Men, and women, yea Sr. might juſtly to my confuſion ſay to me, that I vv ere a Traytor to God and to them. Since (as I thinke in my heart) many Men and Women truſt ſo mickle in my cauſe, that I vvould not for ſaving of my Life doe thus to them.

For if I ſhould doe, full many Men and Women vvould (as they might full truely) ſay, that I had falſely and covv ardly forſaken the truth, and ſlaundered ſhamefully the Word of God: For if I conſented to you to doe here, after your vvill, for boucheife or miſcheife, that may befall me in this Life, I deeme in my conſcience, that I vv ere vvorthy therfore

F to be

be cursed of God, and also of his Saints, from which inconvenience keep me and all Christian people, Almighty God, now and ever for his holy name.

† Dr. Cozens in his Apologie, part. 3. c. 14. p. 212. † Note this. In answer whereof, the High-Commissions † Champion saith and confelleth, *that this was but a favour voluntarily offered unto him upon that Condition* (but in this he overthatteth his marke) *and that Oath was no otherwise exacted of him, nor yet by † Law might be exacted; In so much, as no man is (by Law) bound to make any such promise, or to enter into such a course.*

(c) Fox Acts and Monuments, v. 2. p. 217. By the Brethrens Letter to Thomas Philip, Martyr in these words: (c) Therefore according both to Gods Law and Mans, you be not bound to make answer in any cause, till your accusers come before you, which if you require, and thereon doe sticke, the false Brethren shalbe knowne, to the great comfort of those that now stand in doubt, whom they may trust, and also it shalbe a mean, that they shall not craftily by questions take you in snares; And that you may this doe lawfully, in the 25. Chapt of Acts it is written; It is not the manner of the Romans, to deliver any Man, that he should perish, before that he which is accused, have his accusers before him, and have Licence to answer for himselfe, as pertaining to the Crime whereof he is accused.

And also Christ will that in the Mouth of 2 or 3 witnesses all things shall stand.

And in the 5. Chapter to Timothy, 1. Epist. It is writter: Against a Seniour receive no accusation, but under two or three witnesses, which is any Man that hath an House to governe.

And also their owne Law is agreeable to this. Wherefore seeing it is agreeable to the Word of God, that in accusations such witnesses should bee, you may with a good Conscience require it.

By the excellent passages of *Mr. John Lambert* Martyr to this purpose, in his answer to his first and 41. Articles (d) *(d) Fox Aets and Monu-ments, v. 2. p. 398. 419. 420.* if therefore at any season such infamy was put upon me, I am glad that I have so little regarded the same, that now I have forgotten it.

And though I did remember any such, yet were I more then twise a foole to shew you thereof. For it is written in your owne Law; *Nemo tenetur prodere se ipsum*: No man is bound to bewray himselfe, &c.

But Iudges have need to be sparing, in requiring of Oaths, for in customable or oft swearing creepeth in oftentimes some perjury, as sheweth *Chrysostome* in words sem- blable to these, and things pretious though oft haunt or oc- cupying, lose their estimation.

And so renewed Oaths, unadvisedly required for every trifle usually, doe cause men to regard little for making of them, yea, and I feare to breake them, &c. This hove I shew- ed, because it pittieeth me to heare and see the contrary, used in some of our Nation, and such also as name themselves spi- rituall men, and should be head-Ministers of the Church, who incontinent as any Man cometh before them, annone they cal for a * Booke, and doe move him to sweare, without any longer respite, yea, and they will chardge him by vertue of the contents in the Evangelists, to make true relation of all that they shall demaund him, he not knowing what they will demaund, neither whether it be Lawfull to shew them the truth of their demaunds or noe, for such things there be that are not Lawfull to be shewed.

As if I were accused of Fornication, and none could bee found in me, or if they shall require me to sweare to bewray any other that I have knowne to offend in that vice, I suppose it were expedient to hold me still, and not to follow their will; For it should be contrary to Charity if I should so assent to bewray them, that I need not, & to whom perhaps, though I have knowne them to offend, yet trusting of their amend-

* As the Arch- Prelate did for me, saying hold him the booke some 15 or 16 severall times.

ment, I have promised before to keepe their faults secret; without any disclosing of the same; yea moreover, if such Iudges sometimes not knowing by any due prooffe, that such as have to doe afore them, are culpable, will enforce them by an Oath; to detect themselves in opening before them their hearts, in this so doing I cannot see that men need to condescend to their Requests.

For it is in the Law, (but I know not certainly the place) *Nemo tenetur prodere semet ipsum*; That is to say: No man is bound to bewray himselfe.

Also in another place of the Law it is written: *Cogitationis poenam nemo patiatur*; No man should suffer punishment of men for his thoughts.

To this agreeth the Common-Proverbe, that is thus: *Cogitationes libere sunt a vectigalibus*; That is to say: Thoughts be free, and need to pay no Toll.

So that to conclude, I thinke it Lawfull, at the Commandment of a Iudge, to make an Oath to say the Truth, especially if a Iudge requireth an Oath duely, and in Lawfull wise, or to make an Oath in any other cause convenient, and that also for purgation of infamy, when any infamy is layd against a Man.

• *Apology* Here againe * Dr. Cozens is forced to confesse; First, that 3. part. c. there is none that defendeth any such generall exacting of an Oath 15. p. 219. to answer whatsoever shall be demanded. 220.

• *Note this.*

Secondly, that the Iudgement of Lambert, (that a man is not bound (indistinctly) to bewray whomsoever he knoweth to have offended,) is allowable. For a man being so generally asked, is not bound (by any * Law that I know (saith he) to take Oath to bewray whatsoever he knowes, touching all other mens faults.

Thirdly, that Lamberts judgement, that a man may not be urged in any human Court, to disclose what he thinketh in his heart, is very sound both in divinity and Law.

By *John Marbecke* Martyr, (e) who being both by threats & Fox acts and allurements oft times urged to detect his other Christian & Monie Companions and their secrets, to the Bishop of *Winchester*, *ments v.2.* absolutely refused to discover or accuse any of them, though p. 547. he might thereby have procured his Liberty, and saved his 548. 549. Life, in so much, that *Winchester* said thus to his Men, when he came from Masse.

This is a marveilous Sect, for the *Deuill* cannot make one of them to betray another.

By *M. John (f) Philpot* Martyr, and his fellowe Prisoners, (f) Fox who would neither accuse nor detect themselves, nor one an- acts and other, upon Articles *Ex Officio*, tendred them to answer to *monumēts* upon Oath, but told them they had no authority to inquire v.3 p. 560 of them, neither would they sweare, except they knew where- 561. 562. to, wondering that they would goe about (meaning the 563. Bishops contrary to the Law, to have infamous persons (for they were by them accounted Heretickes) to bee witnesses, and that they had the Law in their hand, and they would doe what they listed.

By which answers they thought them to be † Anabaptists, wood took telling them though they would not sweare against their fel- me to be lowes they should sweare (though contrary to their Canon- whā I told Law) against themselves, whether they would or no. him I knew

But they refused that also, replying, that they would not not whā an accuse themselves, but if any man would lay any thing against Oath was them, they were ready to answer thereto, otherwise they de- but it is fired them not to burthen them, for some of them were be- my cōfort fore them they knew no just cause why, and when they sawv it is no new they could doe nothing that vvay, they vvould haue *Philpot*, name for haue answered but two vvords, vvhither he vvould answer 7 find it to the Articles, vvhich they laid unto him, directlie yea or given to al- may. He told them that his two vvords then should be, that the *Mar-* he had appealed from them as his vn sufficient Iudges, hol- tirs that ding it lauvfull for a man to svveare iudicially called, would not but not as they vvere in a blinde corner. take the

And Oath

(g) Fox
Acts &
Monum.
v. 3, p.
594.

And by *Mr. Philpots* (g) Petition to the Parliament, where he thus complaines against the proceedings *Ex Officio*: In humble-wise complaineth, &c. that notwithstanding that all men had and have free speech in the Convocation House, & ought not to be after troubled for any thing there spoken, not long after the said Parliament, your said Suppliant (without any Act or matter) was commaunded to prison, to the Kings Bench, by the late Lord Chancellour, where he hath remained ever since, untill now of late, that my Lord the Bishop of *London* hath sent for your said Suppliant, to examine him (being none of his Dioces) upon certaine matters, wherein they would have your Oratour, to declare his Conscience, which the said Bishop saith, he hath authority to doe by reason of an Act of Parliament, made in the first and second years to the King and Queenes Majesties raignes, for the reviving of 3 Statutes made against them, that hold any opinion against the Catholique Faith; Whereby he affirmeth, that every Ordinary may *Ex Officio*, examine every mans Conscience, and for that your said Oratour hath and doth refuse, that the said Bishop of *London* hath any authority over your said Oratour.

(h) Fox
Acts and
Monum.
v. 3. p.
664.

By our Reverend Martyr (h) Arch-Bishop *Crammer* in his Appeale from the Pope in these words: The right Reverend Father in God *James Brooke*, Bishop of *Gloster*, Judge and Deputy, under the most Reverend Cardinall *Poole*, cauled me to be cited at *Oxford* (where I was then kept in Prison) to answer to certaine Articles, concerning the danger of my State and Life, and when I being unlearned and ignorant in the Lawes, desired Counsell of the learned in the Law, that thing was most unrighteously denied me, contrary to the equity of all Lawes, both of God and Man. Wherein againe I feele me most wrongfully greeved.

And when he had required of me answers to certaine Articles, I refused to make him any answer.

I said, I would gladly make answer to the most renounced
Kings

Kings and Queenes Deputies or Attornies then present, with this condition, notwithstanding that my answer should bee extrajudiciall, and that was permitted me; And with this my protestation made and admitted, I made Answer, but mine answer was sodaine and unprovided for, and therefore I desired to have a Coppy of mine answers, that I might put to, take away, change and mend them, and this was also permitted me.

Nevertheles contrary to this promise made to me, no respect had of my protestation, nor License given me to amend my answer, the said Reverend Father, Bishop of *Gloster*, commaunded mine answers to bee inacted, contrary to the equity of the Law; In which thing againe I feele my selfe much greived.

By *Richard Woodman* Martyr, (i) who when *Winchester* would have had him to sweare, answered, that he would not sweare for him, and that he owed him not so much service as to tell him, who wrote a certaine Letter, but bid him finde it out as well as he could, for he perceived he went about to shed his blood.

(i) *Fox*
Acts and
Monum.

v. 3. p.
821. 822.
823.

By *Cuthbert Gympson*, Deacon of the Congregation in London (k) who though he was tortured and racked in the Tower, in a most cruell and Barbarous manner, would not discover any of those, that came to the English Service; And being after Articled against, for being at assemblies and conventicles where a multitude gathered together, to heare the English Service, and receive the Sacraments, and to discover whether hee did not read Service there, and approve those things.

(k) *Fox*
Acts and
Monum.

v. 3. p.
865. 867.

He answered, that he was not bound to answer to this Article as he beleaved.

But *John Lithall* Martyr (l) vvho being questioned before the Chancellour both concerning himselfe and some others, that he knew, answered: If you have any thing to lay to my

(l) *Fox*
Acts and
Monu-

chardgements,

v. 3, p. 908.

charge I will answer it, but I will have no other mans blood upon my head.

(m) Fox y Elizabeth young (m) who though she was 6 times urged
Acts and to sweare and threatned the racke if she would not, refused
Monu- notwithstanding, telling her examiners that she knew not
menis, v. 3 what a Booke-Oath was, and that her Lord Christ said, that
p. 910. 911 whatsoever was more then Yea, Yea, or Nay, Nay, came of e-
912. vill, therefore she would take no such thing upon her, if it

were to sweare that her hand was hers; whereupon one of them said, it is a man in a womans Cloathes, offering to put her to her Oath, concerning her woman-hood, but she still refused, telling them, she was a Woman and had Children, and when one of them would have had her, laid her hand on the Booke, for he would lay on his, she told him, so would not she hers.

(n) Fox By Thomas Hitton Martyr, (n) who upon his first appea-
Acts & rance, being asked by the Bishop, to whom he had given cer-
Monum. taine Bookes, that hee brought from beyond the Seas, an-
v. 3. p. swered, he would not declare for such your bloody cruelty,
1003. that you would never sleepe quietly, till you have sucked their blood, as you meane to doe mine.

And upon his third appearance, being offered certaine Articles, and Interrogatories for him to answer unto upon his Oath, refused to sweare, saying, it is against Gods Lawes and good Conscience for any Man, to sweare to shed his owne blood, for so he should be a Murtherer of himselfe, and become guilty of his owne death.

Here have you the practice of the Godly Martyrs, now followeth the Doctrine of the ancient and late Writers, but before I begin with them, I desire to answer one Objection that hath been * objected against the foresaid practise of the Godly Martyrs, and it is this:

* By Dr.
 Feaily &
 Dr. Sough

That

That they refused it, because their lives lay at stake, if by their Oath they had confessed, those things which were asked them, in which case only it is utterly unlawfull, but now there is no such thing, it doth not tend to the taking away of a Mans Life, neither can there come any harme to him by taking it, therefore without danger may it bee safely taken. *Objection.*

I answer first, that, that is utterly unlawfull when it concerns the taking away of a Mans Liberty, and Livelyhood, as it is when it concerns the taking away of mans Life, time permitting it not to tend to the taking away of a mans Life. And since it hath beene the practise of the Godly Martyrs to despise it, let us learne of them to despise and abhorre it too. *Answer.*

Secondly; whereas they say, it is unlawfull, only in that case; I answer, that it is as unlawfull when it concerns the Limme, Liberty, Losse of goods, Freehold, or Scandall of a Man, as when it concerns his Life, and can prove it by the * Confessions of their owne Coates, but I will forbear to cite their words here, because I intend to cite them at large among my late Writers. They beeing those which are quoted in the Margent. And will now declare unto you the Doctrine of the ancient and late VVriters, whose Doctrine and Confessions this Oath doth contradict. As is evident by *S. Ambrose*, (o) who writing upon these words (I have sworne, and have purposed to keepe the judgements of thy righteousness) saith thus: No man sweares well, but hee that may know what he sweares; To sweare then is the judgement of knowledge, and the witnes of the Conscience, &c. have light, that is the knowledge of the Truth afore thee, when thou disposest thy selfe, to take an Oath, so shall not the bond thereof hurt thee. ** See Arch-Bishop Whitgift, in his Conference at Hampton Court, p. 90. Bishop Andrewes in his Sermon of the lawfulness and forme of swearing.*

ing, p. 47. And Dr. Cozens in his Apologgie, part. 3. c. 5. p. 38.

(o) *Ambrose in Psal. xix. Ser. 14. Col. 4. See D. Cozens, part. 3. c. 12. p. 170.*

The Lord who came to teach the young ones, to instruct novices, and to confirme the perfect; saith in the Gospell, I sweare not at all. Because he spake to those, that were weake. To be short, he spake not this to the Apostles apart, but to the multitudes.

For he therefore would not have thee to sweare, least thou (p. Sec. Dr. forswear, &c. And (p) by his 66 Epistle, where he reproveth Willet in one Syagrius the Bishop of Verona: *quod virginem, quam nullus his Synop. argueret, &c.* For that he drew a certaine virgine into a great Papismi 7 hazard and danger of guiltines, without an accuser: Where generall. did he learne any such forme of judgement, if he aske the Cont. qu. Lawes, they require an accuser, if he referre it to the Church, 2. there in the mouth of two or 3 witnesses, every Word is established, &c.

If Syagrius for proceeding against a virgine, for incontinency without any accuser, were much blamed by S. Ambrose, what would he have said, if he had seene this practise in the Popish Prelacy, even (in these our times even in the Cases of Heresie, to which belong the Sentence of Death (saith Dr. Willet.

By S. Augustin (quoted by the said Dr. Willet in his Synopsis (q) In his Papismi 7. general, cont. qu. 2.) q) who giveth this judgement Booke de Civitate Dei, l. 19. c. 6. of that cruell custome of tormenting Men, to convince them by their owne Mouth, which was invented by the Heathen; *Hoc intollerabile est* (saith hee) *& rigandum frontibus lacrimarum, cum propterea torqueat iudex accusatum, &c.* How intolerable a thing is it, and to be much lamented, that while the Iudge tormented the party accused, least unwittingly hee should put an innocent man to death. It falleth out that he adjudgeth to death a man both innocent, and beside tormented; whom least he should slay as an innocent, he before put to torment, &c.

His meaning is (saith Dr. Willet) that when a man is put to the racke, or otherwise tortured, that he might confesse the truth, and cleare himselfe, it commeth to passe, that through

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extremity of the paine, he maketh himselfe guilty, and so the innocent is both wrongfully tormented, and unjustly put to death. Now, the same holdeth with this Oath, for when a Man will not take the same, hee is presently committed to prison, that so he might bee compelled to confesse the truth, and it commeth to passe, that through extremity of the paine, (that is the great chardge he lies at) hee at last maketh himselfe guilty of those things, which they make faults, though none) and so he layes himselfe open to their Censure, which is both finding and imprisoning.

By *Origen* (quoted by *Dr. Cozens* in his Apologie, part. 3. c. 2. p. 11.) who saith thus: (r) I thinke, that he which will live according to the Gospell, ought not to adjure another man, for if by Christs Commaundment in the Gospell, it bee lawfull to sweare, it is evident that a man may not adjure another; and therefore it appeareth, that the High-Priest did unlawfully adjure Christ, by the living God. (r) *Hom. ult. in Matth. 5. Tom. 3.*

By *S. Chrysostome*, who in every of his Homilies to the people of *Antioch*, is most earnest against swearing, in so much as in one place he saith, (s) the nature of an Oath is to peirce further or more dangerously, then a sword, and elsewhere, (t) an Oath (saith he) hath this evill in it, that whether it bee broke or kept, it maketh a man subject to punishment. (s) *Hom. 15. ad pop. Antioch. (t) Hom. 4. in fine ad pop. Antioch.*

(v) Let us not drive our Brethren to an Oath. O man, dost thou know what thou doest herein? in that thou makest him sweare upon the Holy Table, where Christ offered up, is laid: wilt thou even there sacrifice thy Brother? It is better that we lost our mony, then to offer our Brother an Oath. (v) *Hom. 15. (w) Idem Hom. 16.*

(x) But what should I speake (saith he) of such Oathes, and omit judiciall Oaths, that are used in Courts, for which so much can not be said: For there, even for a matter of ten halfe pence; Oathes are taken, and perjuries also be committed. (x) *Hom. 26.*

And therefore a little after ; Lo, I say unto you, and protest, that ye reforme these superfluous judiciall Oaths, and bring rather all such matters unto me.

(y) *Athan.* By *Athanasius*, who saith: (y) Let your yea be yea, and
de Pass. your nay, nay; Thus farre we that be Christians may confirme
& Cruce our speeches, but let us not proceed so farre as to flie unto
Dom. Oaths, and to call God unto witnes, for corruptible Monie-
Col. 3. sake.

And a little after hee saith : Men doe not sweare only for wordly busines sake, but rather to confirme truth, and to shew that which they say to be voyd of fallehood, *therefore if he that sweareth bee true, and to be trusted, what need is there of his Oath; But if he be not to be trusted, why doe wee committ such wickednes, as that for wretched and mortall mens cause, wee should call God, who is above all, unto witnes?*

By *Mr. William Tyndall*, in his Obedience of a Christian Man, p. 122. 179. Let the Iudges also privately when they have put off the person of a Judge, exhort with good Counsell, and warne the people, that they come not at Gods judgments, but the causes that are brought unto them when they sit in Gods stead, let them Judge and condemne the Trespasse under *Lawfull Witnesses*, and not breake up into the Consciences of Men, after the Example of Antichrists Disciples, and compell them either to *forswear themselves* by the Almighty, and by the Holy-Gospel of his mercifull promises, or to *testifie against themselves*: which abomination our Prelates learned of *Cajaphas*, *Matth. 26.* saying to Christ, I adjure or chardge thee in the name of the living God, that thou tell us, whether thou be Christ the Sonne of God.

„ Let that which is secret to God only, whereof no prooffe
 „ can be made, nor lawfull witnesses brought, abide unto the
 „ coming of the Lord, which shall open all secrets.

For it is more then a *cruell thing* to breake up into a Mans heart, and to compell him to put either soule or body in jeopardy, or to shame him, &c.

By his Exposition upon the 5. of *Matthew*, p. 208. 209.
Howbeit all manner of swearing is not here forbidden, no more then all manner of killing, &c. (a) *7bid.*
Tyndall.

But if the Superiour would compell the Inferiour, to,,
Swear, that should be to the dishonour of God, or hurting,,
of an innocent, the inferiour ought rather to die then to,,
swear, neither ought a Iudge to compell a man to swear,,
against himselfe, that he make him not sin & forswear, &c.,, ‡ See *Mat*
Finally, to swear to doe evill, is ‡ damnable, and to performe *thew Vi-*
that is double damnation, &c. *rels Trea-*

And also by his answer unto *Mr. Mores* 3. Booke, p. 309. *tise of the*
And moreover, if a Iudge put a Man to his Oath, *that he shall* grounds
answer unto all that shalbe demaunded off, hee ought to refuse. of Chri-
Howbeit, if he have sworne, and then the wicked Iudge alke *stian Re-*
him of things hurtfull unto his Neighbour, and against the love *ligion,*
thar is in Christ, then he must repent that he hath sworne, but *p. 128. 129*
not sinne againe to fulfill his Oath. For it is against Gods
Commaundement, that a Man should hurt his Neighbour,
that hath not deserved it.

By *Mr. John Calvin*: (b) *The Name of the Lord is made vile* (b) *In his*
& Common, when it is used in superfluous Oathes, although they be *institut.*
true; For in such case it is also taken in vaine, wherefore it shall not *1. 2. c. 8. p.*
be sufficient, to abstaine from swearing falsely, unlesse we doe also *150. 151.*
remember, that swearing was suffered and ordained, not for Lust *152. Sect.*
or pleasure, but for necessities sake, and therefore they goe beyond *25, 26, 27*
the Lawfull use thereof, that applie it to things not necessary. And
there can no other necessity be pretended, but where it is to serve
either Religion or Charity, wherein at this day men doe much Li-
cenciously offend, and so much the more intollerably, for that by
very Custome it hath ceased to be reckoned for any offence at all,
which yet before the judgement seate of God is not slenderly
weyed.

But because there is some difficulty in the Words of Christ
(swear not at all, let us a litle way them.

But herein we shall neuer attaine the truth, unlesse we bend our eyes unto the intent of Christ, and take heed unto the purpose that he there goeth about, which is not either to release or restrain the Law, but to reduce it to the true and naturall understanding, &c.

This if we hold in mind, we shall not thinke then Christ did utterly condemne Oathes, but only those Oathes, which doe transgresse the rule of the Law. (Which the Oath *Ex Officio* doth; for if I can be warranted out of the Word of God, that it is necessary and so by consequence Lawfull, when it is neither tendered in case of Fidelity, as in *Exod. 22. 10. 11.* nor to the end to purge a mans selfe, as in *Num. 5. 11. to 22.* nor to hold forth the truth of his Profession, as in *Matth. 26. 63.* but only ad *inquisitionem criminis, vel sui suspecti, vel fratris pratenfi?*

(c) In his
Apolog.
part. 3.
c. 2. p. 9.

I shall willingly submit and take it, for where the Word is wanting in any part of Gods Worship, (and an Oath is confessed by (c) Dr. Cozens to be a service and worship yeelded unto God himselfe in a twofold regard:
The first is, in that we fulfill and performe that, which wee sweare.

The second, in that by calling of him to witnes, we doe with all acknowledge that he knoweth all things; and is a swift Judge and Revenger of all those that love and make leasings. (it is sinfull, *Rom. 14. 23.*) Thereby it appeareth, that the people at that time did forbear no manner of swearing but perjuries, whereas the Law doth not only forbid perjuries, but also all idle and superfluous Oaths; The Lord therefore the most sure expositor of the Law, doth admonish them, that it is not only evill to forswear, but also to sweare.

But how to sweare? As in vaine.

But as for those Oathes that are commended in the Law, hee leaveth them safe and at Liberty, &c.

Therefore I have no better Rule, but that Oaths be so tempered, that they be not unadvised, that they be not common without regard, that they be not used of raging Lust, nor trifling, but that they

they serve just necessity, as where the Lords glory is to be maintained, or the edification of our Brother furthered, to which end the command of the Law tenderh.

By *John Bale*. (d) This third Commaundment will not (d) In his serve your turne, for it pertaineth to swearing, and not to vowing, as Christ hath expounded it. *Apolog.f.*
92.95.96

If ye take vowing for a kind of swearing, then hath Christ utterly discharged you, by this mighty word of his *Matth.* 5. I charge you, that ye sweare not at all, that is to say, that ye vow in no wise, &c.

Your question, how should a man bind himselfe to serve God, but by a vow or Oath, is both wicked and foolish. For all we that beleve in Christs name, are Children and no Servants, *John* 1.

Our Estate and Religion, is a State of Liberty and no bondage. Our Law is a Law of Liberty, and no bondage, *John* 8.

Now are we become Sonnes by Election, free heires, and inheritours with Christ, *Gal* 4. If wee bee made free by his death, we ought no longer to serve that way in bondage. For the Servant knoweth not the mind of his Master. But unto us as to his deare Children and Freinds hath he opened all, *John* 15. If we now doe any thing to God, it must come of a love in freedome, and not of a vow or an Oath in bondage, &c.

If we must doe things thus to God, why do our domineering Lordly Prelates then, by bondage, compell Men to fulfill their wills, contrary to all Law, but that they would shew themselves not to be like Christ and his Apostles, but the Devill and Antichrist, from whom *Dr. Pocklington* (e) can prove them to bee linially descended. (e) In his Sunday no Sabbath,

A (f) Christian mans obedience standeth not in the fulfilling of Fanaticall vowes, as they have beene used (better broken then kept) but in the faithfull observation of Gods Holy-precept, declared by Christ in his Gospell, &c. (f) Bale, p. 2.44. f.96.

If we will needes serve, being the Children of the Free-
WOMAN,

woman, *Gal. 4.* Let us seeke to serve in Liberty, and not in bondage. Let us beare no longer a strangers Yoake with the unbelievers, *2. Cor. 6.* Let them to whom God hath given knowledge shake of those shackles, and repent of those snares of the Devill, *2. Tim. 2.* For they are the very Characters or Markes of the infernall Beast, whereby Antichrists Ministers have power to buy and to sell in that blasphemous Kingdome; *Rev. 13.* They that will hold of that Marke, must drinke of the Cup of Gods Wrath; *Rev. 15.* And finally be turned over in the Lake of burning fire and Brimstone, *Rev. 19.* Having their names clearly wiped out of the Booke of Life.

S. Paul would never intangle the *Corinthians* with such a snare, as these your vowes (nor as our High-Commissioners *Ex Officio* Oath is) but gave them eruditions, honest, and comely, *1. Cor. 7.*

(g) In his
exhorta-
tion to
accustom-
able swea-
vers; and
Sixtus
Sennifis in
Bibliotheca
sanct.
l. 6. An-
not. 26.
p. 435.

By the record that (g) *Mr. Miles Comerdale*, Bishop of *Exeter*, makes of the Authour of the imperfect worke upon *Matth. Hom. 12.* Fathered upon *S. Chrysostome* in this manner: Heare this O ye Clerkes, or Clergymen, who reach out the Holy Evangelists, to them that sweare, how can ye be secure from that Oath, or this precept of our Saviours, sweare not at all, who give an occasion of perjury?

Can he who carrieth fire, whence burning is occasioned, be free from burning? Or he who holds out a Sword, by which Murther is committed, is not he a sharer in that Homicide? So he who gives an occasion of perjury to another, is a partaker of his perjury. Let the fire cease, and there will be no perjury.

If it were just to sweare well, ye might justly excuse yourselves, by saying, we have given them the Gospell, that they might sweare, not that they might forswear, but now since ye know that even to sweare well is a sinne, how can ye be free, who give an occasion of sinning against God.

By

By *Dr. Andrew Willet*, in this manner (b) againe, they used (b) In his unlawfull wayes, and unjust insisting, and examining, by Synopsi cruell torments, the poore innocents brought before them, *Papismi* neither shewing accusers nor witnesses, &c. which practice 7. generall of theirs is flat contrary to the ancient Cannons. *Calixtus* the Cant. qu. second: *Per Scripturam nullus accusare, &c.* 2, fol. 374

Let no man accuse or be accused by writing, but by his owne voyce, and in the presence of him who is accused, let the accusation be made; *Fabians Epist.* 2. *Nullus presumat accusator simul esse & iudex, vel testis, &c.* 10 377.

Let no man presume to be an accuser, and judge at the same time or witnesses, because in every judgement there must be foure persons, the Iudges, accusers, defenders & witnesses. What clearer Testimony can we have against this Popish course and manner of proceeding in judgement, when as without witnesses a man is condemned, whereas the Law, as we see, alloweth the accused, to understand the Articles whereof hee is accused, that he may have time to answer, to his accuser, that if there be cause, he may take exception against him.

This was cleare contrary to the Law of *Moses*: At the Mouth of 2 or 3 witnesses shall hee that is worthie of death dye, *Deut.* 17. 6.

Now, as touching those 3 points, to proceed without an accuser, without witnesses, by the parties Oath, and by Torments, in matters and causes concerning the Life of him that is accused, I will in order shew, how it agreeth or disagreeeth both with the Civill and Cannon Law.

Concerning the necessitie of an accuser, in matters of judgement, the Civill Law hath thus determined: *Cod.* l. 9. *Tit.* 2. *the necessity of an* *Leg.* 16. *Libellus in criminali, &c.* The Libell in criminall causes must containe the name of the accuser, the Iudge, and of the party accused. *Arriadus, Leg.* 7. *Honor, quisquis crimen intendit in iudicio veniat, &c.*

H

Who

Whosoever doth object any Crime, let him come himselfe into open judgement, and declare the matter, and let him be under safe keeping, as well as the party accused, till the matter be examined.

Againe, *Arcad. Leg. 14. Index in publicis criminibus non debet uti emendicatis suffragijs decretorum, &c.* The Iudge in publique Crimes, must not be ruled by the reports of the Acts or Decrees, but seek out the truth of the matter. This law chardgeth judges not to be carried, no not by the cōplaints or informations of the Notaries & Officers of the Court, without due prooffe. Herunto their own decrees give cōsent: *Cā. 2. q. 1. c. 10. Nicholaus, Restituendus, qui nec confessus nec convictus*: He must be restored, that is neither confessed nor detected, *c. 7. Gregor. Si non alij testes, alij accusatores, &c. iudicium non ordinabiliter factum*. If that there be not some witnesses, some accusers the judgement is not orderly. Likewise *Can. 30. qu. 5. c. 11. Eleuther* prescribeth this forme of judgement, that the judge should give Licence to each party, the one to object, the other to answer; that both parties action may be fully cleared, and inlightened, &c.

But this cannot be, where as there is but one party, where-
In a noto- fore both the Lawes agree in this, that an accuser must be in ev-
rious mat- ry Lawfull judgement produced; Yet there is a certaine Case
ter, which excepted, wherein an accuser is not needfull, as unlesse the
is knowne matter be notorious, the judge must proceed by way of accu-
per confes- sation. So also saith the Cannon-Law, *Decret. 6. Reg. 1. 3.*
sionem, pro Tit. 2. c. 8. *Innocent. 3.* In a notorious matter, neither witnesse
bationem nor accuser is necessary. And what is to bee counted noto-
rei eviden- rious, or manifest, is further shewed *Tit. 40. c. 24. Innocent.*
tiam, nei- 3. That is a manifest Crime, which is knowne *per Confessionem,*
ther wit- *probationem, rei evidentiā* By confession, or due prooffe, or the
nosse nor evidence of the thing it selfe, &c. If then in cases only no-
accuser is toriously knowne aconfer, is not necessary, but in all other ca-
necessary. ses he must be produced; Then have the Papists (I had almost
said

said those of the English Inquisition-House at Lambeth) been most injurious to many converted before them for Heresie (or Puritanisme) as they call it, and other Crimes, who were not suspected, much lesse detected thereof, and so farre from being notorious Heretickes; and yet they proceed against them, as they call it *Ex Officio*, shewing no accuser at all, &c.

Now for the second point, whether a man may be urged *Whether* to accuse himselfe upon his Oath, especially in capitall causes, *a man* the judgement of the Law is, that except in certaine causes *may be* none should be enforced to testifie against themselves. *urged to*

First, *Cod. l. 4. Tit. 20. leg. 6. Dioclesian: Nemo contra se cogni. accuse him- selfe testes producere.* No man is compelled to produce wit- selfe upon nesses against himselfe, but hee that by his Oath maketh him- *Oath.* selfe guilty, witnesseeth against himselfe.

So likewise in the Canon-Law, *Caus. 35. qu. 6. c. 4. Vrbani- nus, si negaverint, sibi ipsis relinquendi.* If Incest cannot bee proved, neither by Oath of witnesses, nor by Confession, the parties must be charged by their Baptisme, their Faith, &c. *Certaine* to confesse the Truth. But if they deny, they must be left to *cases as-* themselves, &c. This Canon prescribeth no Oath, but an *signed,* earnest obtestation to bee ministred unto the suspected *wherein* party. *the party*

But yet certaine Cases there assigned in Law, wherein the *accused,* party accused, may be brought to his Oath, as first: If the proof *may be* doe otherwise faile: *Cod. lib. 4. Tit. 1. leg. 3. Dioclesian:* So that *brought* all other proofes must bee used before the party be driven to *to his* his Oath, that as the Law is for Torments, and Tortures, that *Oath.* they must be ministred in the first place, but other arguments *First, if* must first be used: *Cod. l. 9. Tit. 41. leg. 8. Diocles.* So likewise *proofe* the Oath of the party must not be enforced, but other evi- *faile.* dences and presumptions first are to be produced. *There*

Secondly, there must by the Law a party be given, and an *must be* accuser set forth, where the other party is put to his Oath: *an accuser.* The reason is this, because the guilty party hath 3 things put given.

to his choise by the Law, he may either sweare or be content to be condemned, or referre the Oath to his accuser, that is urge him first to sweare, *Cod. l. 4. Tit. 1. leg. 9. Dioclesian.* The reason is given, *Leg. 12. Instinian.* : He must not refuse to doe that in his owne person, which he was pleaded with in his adversarie, &c.

So then where the guilty party was urged to sweare, the accuser allowes by his Oath to justifie his accusation. And this referring or rebounding of an Oath is allowed by their Law: *Decret. Greg. l. 2. Tit. 29. c. 36. Gregor. 9.* An Oath in judgment between party & party may be referred.

Where the
matter
shall bee
decided
by the
Oath.

Thirdly, where it is agreed by the parties themselves, that the matter shalbe decided by the Oath of a party, in that case such an Oath by the Law is allowed, as when there ariseth a question, whether one be right here, if they whom it concerneth, be content to put it to his Oath, it shall stand: *Cod. l. 4. Tit. 1. Leg. 6.*

In civill
causes to
releive
others.

Fourthly, the parties Oath by the civill Law was used for the most part in civill causes, as in questions of debt, in matters of trust; and such like, where an apparant injury did seem to be offered, or intended by the party sworne, to the party other party by whom he is impleaded: As *Cod. l. 4. Tit. 1. Leg. 5.* The Pupill or Ward might put his Tutor or guardian to his Oath, concerning such things as were committed to his Trust, *Leg. 9.*

In an Action of debt, the debtor might be put to his Oath, he must either sweare or pay, *Leg. 10.* In an action of a thing committed to ones trust, the partie might be required to take his Oath. In Theft and the like cases civill, where the Truth is concealed to another mans losse and hinderance, the Oath of the partie sued or impleaded, might be demaunded, but in cases Criminall, where the offence redoundeth to the hurt or dammage of the party, rather then to the releife of another, it is thought hard to presse him with an Oath against himselfe, yet in some Criminall cases it is allowed, as now followeth

eth to be shewed; as first, where the offence is publike, and the punishment extendeth not to death, where other proofe faileth, the partie may be chardgeth with an Oath, &c.

So then in these cases rehearsed, where a partie is given, and all other proofes besides first used, and in civill matters to releive others from a wrong, and sometime in Criminall, where the offence is publike, and not unto death, it is Lawfull to presse the defeddant with an Oath.

But first we must consider in what Cases Tortures (that is an Oath) are to be used.

Secondly, in what manner.

Thirdly, what persons are exempted from them: For the first (i) though that bondslaves might be put to Torture, upon divers occasions, as if they were fugitives, (k) to know the right heire to their Master, (l) and whether it be a forged Will or not, (m) yea a slave may be examined by Torture of his own Acts in embeateilling of his Masters goods, (n) others in case of Treason against the Priuce, (o) Falsifiers of coyne, (p) a woman suspected for poisoning her Husband, (q) they that are accused of Witch-craft, also may be put to the racke, (r) where the woman is suspected of adultery, the Servants may be enforced by Tortures, (s) in the murther of the Husband or the Wife, the Servants may likewise be urged.

Secondly, as touching the manner, there are certaine Rules set downe in the Law. First (t) the guilty partie must not be Tortured, unlesse the accuser doe bind himselfe to endure the like, if he prove not his accusation.

Secondly, (v) The Judge must not begin with Torments, but be induced by other arguments to doe it.

Thirdly, (w) He that is Tortured, must not be urged to bewray his fellowes, and in their owne Law it is thus decreed: *Caus. 5. qu. 5. c. 4.* They must not be beleaved, that of themselves doe appeach others, but let the Religious Tormentor fetch out the Truth, by putting him to paine. Thus vve see what moderatiō the law would have observed in tormenting.

H 3

But

(v) *L. 9, Tit. 22, Leg. 13.* (w) *L. 9. Tit. 2, Leg. 17.*

*In some
criminall
cases a mā*

*may be
urged to
take an
Oath aga-
inst him-
selfe, as
first, where
the of-
fence is
publike.*

*(i) Cod. l. 6
tit. 1. leg. 4
(k) Cod. l. 1
9. Tit. 41.
leg. 9.
(l) Leg. 10
(m) leg. 15
(n) Cod. l. 1
9. Tit. 8.
Leg. 3.
(o) l. 9. tit. 23.
leg. 1.
(p) l. 9. tit. 41.
leg. 3.
(q) Tit. 18,
Leg. 5.
(r) l. 9, tit. 9.
Leg. 3, tit. 16,
leg. 19.
(s) Cod. l. 9
tit. 2, l. 13.*

But the Popish Tormentors contrary to these rules have (nay our Prelates doe) applied torments (imprisonment) without any accuser, having no other evidence to induce them: And only to the end, to cause them one to bewray another,

(x) L.9. Thirdly, the persons exempted by the Law, are first the
 Tit. 41. (x) servant must not be tormented against his Master, (y) nor
 Leg. 7. yet Souldiers, (z) nor Noblemen, (a) nor innocents, (b) Cler-
 (y) L.9. gy-men must confesse the Truth without Torture. But the
 Tit. 41. Romish Tormentors in their cruelty have violated all good
 Leg. 8. Lawes, Tormenting not only Servants to confesse against
 (z) Leg. 11 their Masters, but Children against their Parents, &c. Thus
 (a) Leg. 17 it is evident how cruelly contrary to the ancient Imperiall
 (b) L. 1. Lawes those cruell persecutors have tormented the poore
 Tit. 8. professors of the Gospell, yea and contrary to their owne
 Lawes, *Caus. 23. qu. 5. c. 1.* The confession of faults must not
 be wrested out, by streaching out upon the racke, or flitting
 or grating with engines, scorching with flames, &c.

And thus in every of these points in proceeding against Christians, without witnes, or accusing, in tyrannising against them unto death, even by their owne oath, in vexing of them with unspeakeable Torments, they have transgressed and violated both divine and humane Lawes.

Thus and much more writes our learned *Dr. Andrew Willes*.

By the Confessions of Archbishop *Whitgift*, in his Conference at *Hampton Court*, before King *James* and his Counsell, p. 90. and Bishop *Andrewes* in his Sermon of the Lawfulness and forme of swearing, p. 47. That if any Article before the High-Commission did touch the party any way, either for *Life, Liberty, or Scandall*, he might refuse to answer, neither was he urged thereunto, and that if it tend to his dammage or to prejudice of his Liberty? Our Rule is: *Qui potest ad pœnam, potest ad qua pœna consequitur.* Therefore in a matter of *Life or Limme*, we admit not the Oath. Because no men can
 Law-

Lawfully sweare ; to cast away or maine himselfe.

By Dr. Cozens in his Apologie, part. 3. c. 1. p. 2. where hee (d) For writes thus : The Lawfulness of an Oath appeareth in that *sunary pro* we are in the Decalogue forbidden, to take Gods Holy name *ceedings* in vaine. *by Iurif-*

And in *Exodus* it is said : Ye shall not sweare by my name *diction* falsely ; Neither shalt thou defile the name of thy God, I am *Ecclesia-* the Lord : So that to sweare, is not simply and absolutely for- *sticall trea* bidden, but swearing in vaine, and forswearing. Which I have *ting of* proved already in my 7. Reason, to be a taking of Gods name *Oaths.* in vaine, in taking this Oath.

Absolute compassion I call it, saith (e) he, when a man (e) *Part. 3* seeketh as deeply and necessarily by such adjuration, to tye *c. 2. p. 11.* a mans will and conscience, as he may doe, by the like obte-
station of Gods name, bind his owne will himselfe. And this
Adjuration is very unlawfull, *because every man is Lord and*
guider of his owne will, and of his owne voluntary actions, but not
so of any other mans.

Againe, c. 5. p. 38. but these two cautions you must be fore-
warned off; First that it is *not holden* for any Law in England, Note this
nor by practise of any *Caure here used*, that a man should be exa- his confes-
mined upon his Oath, touching a Crime, whereby his Life, or any sion.
of his Limmes may be endangered.

The reason why the Lawes thought it unreasonable to
stretch it thus farre, was for feare of perjury. Because it can-
not be entended of most men, but they will rather hazard an *Job 2. 4.*
untrue Oath ; Then either their Life or Limmes, kinne for
skinne (saith Sathan to God) and all that ever a man hath,
will he give for his Life.

And c. 5. p. 41. he furthre saith, that if one of the Grand Ju-
ry, being to be sworne, would deny to take the Oath, except
hee might have some certaine offences (usually given in
chardge) left out and foreprised severally out of his Oath,
least otherwise he should thereby be driven to accuse himself,
would the Iudges or Officers hereupon thinke it realonable

to spare these men, and let them so goe, and not rather repute them to be (indeed) guilty of those Crimes, for which they refuse to take Oath, to tell and discover their knowledges? In like sort therefore, why should such men, *as be probably detected* of Crimes nothing so penall, and who refuse to take Oath, to answer to them, be judged by any man to doe it upon good ground and conscience, and not rather, that they (as the others) refused it upon guiltines of their owne consciences?

By which words of his, it evidently appeareth, that a man should and ought to bee detected of Crimes before he take his Oath, which our Commissioners deny to every man contrary, as I have shewed before to all Law and Iustice, namely to the Statute of 2.H.5.c.3. Which enacted that from thenceforth the Lible should be granted and delivered to the party without difficulty, and in case it be refused a Prohibition lies upon this Statute.

I am forced to mention this Statute againe, least that our Dr. Cozens (or Cozening Dr.) should still plead ignorance, and say, that he knowes no Law that doth of necessity require articles to be shewed to the cited persons, before they relolve whether they will take their Oath or not.

Againe, c.7.p.82.83. he confesseth it is true, that when a mans owne fault is secret, and not any way bruited and published abroad, hee himselfe is not bound by Law to make confession thereof, to any Magistrate or Officer, civill or Ecclesiasticall, whether he be urged to sweare thereupon, or otherwise; for in such case it is simply secret, and the Magistrate (except he should Minister a generall Oath like unto the Popish chard at * *Shrift*, not warranted by any Law) cannot possibly in speciall or particular manner interrogate him of that, whereof hee never heard, nor once dreamed,

• See his
Apology,
part. 3, c.
13.p.180
281.

And

And by many (f) others all of them passing a joynt sentence (f) *Beatos* of condemnation against the Oath, and by this time I hope *Doctrine* you plainly see that it is against the Practice, Doctrin, and of *Christ* Confessions of the Godly Martyrs, Ancient, and late Writers. and *An-* Therefore I will no further trouble my selfe or you, in that *richrist*, course, but come to my next reason, which is

v. 3. f. 411

Fulke on

the Rhemist Testament. Annot. 23. Acts v. 12. and Matthew
Virels learned Treatise of Christian Religion, p. 165.

Fiftenthly, because it is farre worse then Auricular Confes- *Because it* sion, for that is voluntarily, this by constraint, that to pardon, *is worse* this to induce punishment to himselfe, that is but to one *then auri-* Man, this to many, that his owne time to confesse, this when *cular con-* it is most inconvenient and prejudiciall, that accuseth but a *fession.* Mans selfe for his owne sinnes, this his Brother as well as him- selfe, and that for such things as it may be he only heard re- port off, and many times need no pardon, but will be sure to finde punishment.

Lastly, because it is as bad or farre worse then the Span- *Because it* nish Inquisition; (g) For they in their Pharisicall proceedings *is as bad* suppress the name of the accusers and witnesses, though *as the* there bee no danger at all feared in the publishing of them, *Spannish* contrarie to the Decree of *Boniface 8. Sect. Decret. l. 5. Tit. 2. Inquisitiō.* c. 20. *Cessante periculo publicanda, &c.* Which Decrees that (g) Dr. where there, is no danger the names both of the accuser and *Wickers* the Witnesses must be published.

Synopsis

So doe they here of purpose to encrease their chardges, *Papismi* which they shall never be payed againe, or by their owne *7 generall* confession to make them bewray themselves, or else to deny *Cant. qu.* the thing, which if they can then prove by witnesses, they will *2. fol. 377* bring him under the head of perjury. *378.*

Againe, in the Spannish Inquisition they have divers con- stitutions made concerning the person, quality, and condition of accusers, as a Woman is not admitted to be an accuser, one

Brother is not to accuse another, nor he that is nourished his nourisher or patrone, nor the Servant his Master. No infamous person can be received to be an accuser.

Yet notwithstanding the High-Commission Court have and doe by this their Oath admitt may cause vvomen to accuse their Husbands, Children their Parents, Servants their Masters.

I need not give an instance here in particular, their practises are full every w^here of such examples.

(h) *Bales Apolog. fol. 150.* Thus have I given account, (Christian Reader) why I chose rather to expose my body, to the bonds of imprisonment, then my conscience to the bonds of this Oath (in the taking whereof these (h) three things ought to be regarded, a perfect age, full discretion, and a ripe deliberation) which beareth me record, that I seeke to please God, and that the love and feare of God, causeth mee to doe as I doe. If it be more sharpe then ye looked for, ye shall the lesse blame me; because God is in it so deeply dishonoured. For though I can let mine owne injuries passe by unrevenge, yet can I not suffer with Conscience, his so great dishonour unrebuked.

(i) *Chrysost. 1st. 122. Psal. 5.* For S. Chrysostome saith, (i) this is the Office of an especiall wise mind, not to revenge his owne, but to prosecute mightily the injuries done to God.

(k) *Chrysost. hom. 5. in opere imperf.* And elie-where: (k) Let us learne (saith hee) by Christs Example, couragiously to beare injuries that are done to our selves: But not to endure so much as the hearing of injuries done to God.

For it is commendable to bee patient in our owne injuries; But to dissemble the injuries which are done to God, is ungodly and wicked.

(l) *Fox Acts & Monn. ments, v. p. 547. 548. 549.* The Oath about which I have all this long time contended what is it else but both Devilish, Heathenish & descended from Rome in a generall Counsell there holden by Pope Innocent the third, as appeares first by that speech of (l) Winchesters to Mr. Markocke Martyr, when he could not get him to discover

cover or accuse any of his Christian Companions, or their secrets in these words : This is a marvellous Sect ; For the Devill cannot make one of them to betray another.

Secondly, by that of *Dr. Willer* (m) who shewing the judgement of *S. Augustine* concerning that cruell custome of Tormenting Men to convince them by their owne mouth (writes) which was invented by the Heathen.

Thirdly, by *Sr. Thomas More* (n) who was beheaded for a Traytor to King *Henry* the 8. because he would not take an Oath, to the Act of Succession, writes (in his *Debellation of Salem and Byzance*, part. 2. c. 15. f. 71.) thus for the suit *Ex Officio*.

This Law also which this good Man thus impugneth upon his owne unreasonable reason, was thought a Law right reasonable, as I told you in a generall Counsell at *Rome* there holden by *Pope Innocent* the third, and many great wise and well learned vertuous men there at, &c.

Let us then with all Godly endeavour, abhorre it, utterly defie it, and spit at it, as at the most filthy dirt of the Devill.

And if any good fall out hereby, I shalbe glad, and praise God for the same; If none, yet have I satisfied my owne conscience in uttering my mind why I refused it, on which I shall stand till I bee convinced by stronger, for refusall of which if I doe suffer (by the High-Commissioners, of whose Court *Dr. Barnes* in his Supplication to King *Henry* the 8. thus complained, p. 183. In the Bishops Court no man can be found innocent.

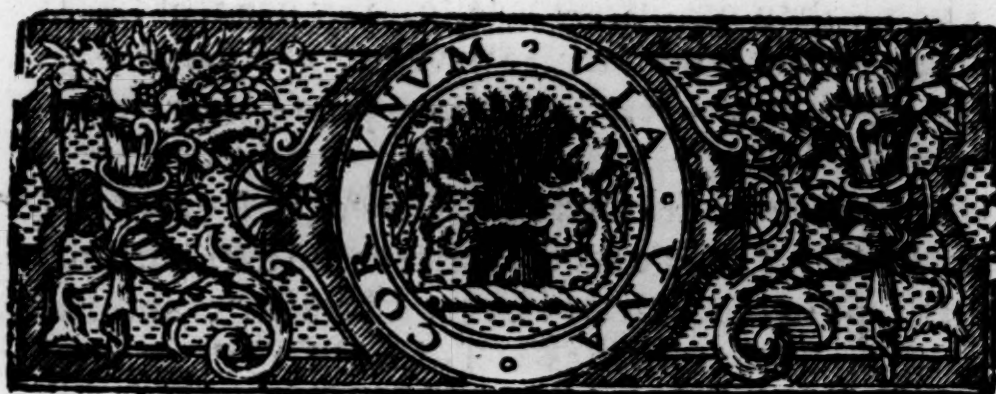
Is not this a marvellous Court that they have, wherein there was never any man accused of Heresie or Schisme, were hee learned or unlearned, but they found him guilty.

Is not that a marveilous Court, that never hath Innocents? What Court within this Realme may lay this, againe: It is my misery here, not my sinne, but joy hereafter, and I shall not despaire but with Queen *Elizabeth* say: Hard things may be mollified, crooked things may be straightned, a rock will in time relent; and *Troy* though it stands out long, it yeals at last, whilist there is a Sunne to set, I will not despaire of a good issue: *Non omnium dierum Sol occidit*, shall be still my cōfort, and will by Gods grace addresse my selfe to defend his truth by suffering, and willingly lay my head to the block, and this shall be my peace to have a quiet Conscience with my God; whom I will abide for with all patience, untill he worke my full deliverance; Praying, from the English High-Commission, worse then the Spannish Inquisition, good Lord deliver me

Nathaniell Wickins.

*From my delectable, pleasant,
sweet, rejoycing Pallace, or
Colledge,
Woodstreet Compter,
this 10. of May,
1638.*

AN



AN APPENDIX.

SInce there is so great Holines and Relig'on in an Oath, that it sufficeth for a confirmation of that whereunto it is applied, that it puts an end to all strife, vvhhen otherw^{se} the Testimonies of men and other proofes doe faile, and since it is to be used only for the setting forth of the glory of God, and for the profit and benefit of men, and since Man is taught by the Holy-Ghost to sweare in truth, justice and judgement, *Jer. 4. 2.* (the three essentiall properties of every Christian mans Oath) I have added this following Appendix for the better clearing of that place, from that damnable explanation which some *Divines* have lately given it without blushing, abusing, and scruiing it up to the highest pegg, for to prove the order therein prescribed to be observed in the taking of this wicked soule-slaying Oath *Ex Officio*, viz. that a man sweares in truth, justice, and judgement.

In truth so long as he sweares to answer directly when he comes to heare the matter, to which he sweares to answer, and in answering directly he hath sworne in righteousness, though it be to the injury of himselfe or neighbour, and he sweares in judgement, because it is done judicially, not rashly.

Thus have some expounded it ; and made the remedy as bad or worse then the disease it selfe. For hee that shall follow this direction, will sweare in vaine, and flat against this excellent rule of the Prophet, that man should sweare in truth, judgement and justice.

If we may beleeve learned Mr. Morrice, & Reverend Mr. William Perkins (whose words deserve no lesse then to bee written deepe in the hearts of every Christian, and had in perpetuall remembrance to the third and fourth generation) on these words of the Prophet, whose words follow.

(a) Mr.
Morrice
in his
Treatise
of Oaths,
p. 5.

(b) Mr.
Perkins in
his Cases
of Con-
sciences, l.

3. c. 13.

Sect. 2.

p. 225.

For to sweare in truth (a) is to say truely without falsehood, deceit or dissimulation, the heart and mouth agreeing in one. And we must know (b) that there is a double truth, the one of the thing spoken, the other of the minde, wherein it is conceived; and this is done first, when a mans speech is framed according to the thing. Secondly, when a man speakes or sweares as he thinketh or is in his Conscience perswaded of the thing.

For to sweare in judgement, is to sweare with good discretion, soberly, well advised, and assured of that we will affi me: or deny upon Oath. Which we cannot doe if we have not consideration.

First, of the thing in question, which is to be confirmed.

Secondly, of the nature of an Oath that is taken.

Thirldy, of the mind and true meaning of him that sweareth.

Fourthly, of the particular Circumstances, of time, place, and persons, when, where, and before whom we sweare.

Fifthly, the event or issue of the Oath.

Now, how can the Oath Ex Officio be rightly urged or received without great offence to his divine Majestie, for as much as the party deposing is not before he sweare, made acquainted nor understandeth what questions or interrogatories shalbe demaunded, but by his Oath hath fast bound and subjected himselfe to the discretion or indiscretion of another, that is the Iudge Ecclesiasticall, who having straightly eyed and snared this silly Subject, may now use or abuse him at his will and pleasure, either against Law enforcing him to

the

the band of his Oath, to accuse himselfe; even of his most secrets and inward thoughts, or contrary to Christian Charity, yea humanity it selfe, constraining him to enforme against his naturall Parents, dearest freinds, and nearest neighbours, or to bewray with greife of heart such matters of secrecy, as otherwise were inconvenient, and peradventure not honest to be revealed.

For to swear in righteousness, is to swear in things just and lawfull, not repugnant to the will or Commandement of God, for to swear to doe the thing that is unjust or unlawfull, the glorious name of God is dishonoured.

And it lawfull, first, when it may stand with piety and Charity.

Secondly, when the occasions of taking the Oath be just and lawfull, that is:

First, when the taking of it may further * Gods glory and worship, or to serve to prove some Doctrine of salvation, in whole or in part. * See Calvins Catechisme on the 3. Commandment.

Secondly, when it may tend to the furtherance of Brotherly love, or to the preservation of our Neighbours, Life, goods, good name; Or further to the confirmation of some league, Covenant or Contract made between parties upon good ground, and for good and necessary purposes.

Thirdly, when it serveth to relieve a mans owne private necessity, as when one sweares to maintaine his owne good name, goods or life.

Fourthly, when the Magistrate doth exact it by order of Justice.

But whether the Oath *Ex Officio* be exacted (now a dayes) to any of these ends, I leave it to the serious consideration of all true Christians to examine, desiring to know what difference there is betweene the rash and inconsiderate Oath, of Herod, and that which we now have in question, the one, being to performe or grant whatsoever should be required, & the other to answer to all questions, that shalbe demaunded, since there be as unlawfull & dishonest questions mixed, as ungodly requests made or desired.

Thus

Thus having cleared the Text of *Jeremy* from that false manifestation by some layd upon it. I proceed to the other matter, which moved me to adde this *Appendix*, as an Addition or fuller demonstration of the unlawfulness of the said Oath, desiring the (kind Reader) not to expect any new reasons, but only some 4 or 5 of the other enlarged, either in the reasons themselves, or in the answers to the Objections, with some other that I have heard since objected against them, and first against my first reason. There hath been alleadged by some *favourers of this foule abuse (c) the manner of tryall by adjuration of the suspected Wife, that is the Law of Jealousie, (d) the Inquisition and expiation of man slaughter, where the Author is unknowne, (e) and the examination of

* Dr.
Gough &
Sr. John
Lambe &
Dr. Co-

zens, A-
pol: part. 3
p. 11.

142. 143. All which make nothing for the Oath *Ex Officio*, as by the consideration of the Lawes and History it selfe shall easily appeare.
144. 145. For as concerning the Law of Jealousie, it is further answered by Mr. Morrice: That although the Wife were to be (c) Num. tryed by Oath and adjuration in that manner, and with those 5. 10. circumstances as is there prescribed, either to satisfie the restless head (d) Deut. of her jealous husband, if she were guiltles, or to receive by the 21. 1. to 9. wonderfull working of that accursed water, if shee were faulty, Josh. 7. 10. condigne punishment for her heynous offence, both of perjury and adultery, yet it is very manifest in this case that the Wife is not summoned or cited by the Priest or Magistrate *Ex Officio*, but brought unto him by her accusing Husband, who upon offence conceived offering up his complaint, and thereupon the Woman is called for, and put to her purgation, well knowing her accuser, and having perfect notice, before shee sweare, of the Crime objected.

Secondly, God hath appointed an Oath to be taken by the Wife in this especiall and singular Case of Jealousie, for the satisfaction of the suspicious mind of the Husband; Ergo every Judge Ecclesiasticall to satisfie his Jealous suspicion or imagination of any

any crime, may oppose by Oath, and compell men in their purgation: who is so simple that seeth not how weake an argument or conclusion this were.

As touching the inquisition for murther or manslaughter, it is ordained, that the Elders of that Citty, which upon measure Deut. 21. taken fallerth out to be next unto the slaine Man, should wash 1. to 9. their hands over a beheaded Heifer, protesting and saying in the presence of the Priests. Our hands have not shed this blood, neither haue our eyes seen the slayer. O Lord bee mercifull unto thy people Israell, whom thou hast redeemed, and lay no innocent blood to the charge of this people, &c.

How any thing here may prove the exacting of the Oath *Ex Officio* to be Lawfull, I see not. A man is slaine, the offendour unknowne, the Elders by this especiall Law of expiation doe protest as aforesaid.

But where is an Oath in this case given to any particular person? If this protestation shalbe thought in some sort to countervaille an Oath of purgation, yet where is there any protestation or Oath required or taken to answer generally to such interrogatories as shalbe propounded upon unknowne secret or barely suspected matters? Nay, we see evidently the fact and felony (to the offence both of God and Man) to be publique and apparant, the offendour only lyeth hidden and unknowne.

Concerning *Achan* and the proceeding against him, wee see by the sacred History how the offence in generall is by God himselfe made manifest unto *Ioshua* the Prince of the people: vizt.

That an excommunicate or cursed thing was taken and concealed, &c. the offendour was only to be found out. Inquisition 10. to 19. being made by Lot or otherwise (God assisting) *Achan* is apprehended as guilty. What followed? He is by *Ioshua* examined of the particular, using these words: My Sonne, I beseech thee to give glory to the Lord God of Israell, and make confession unto him, and shew me now what thou hast done, hide it not from me.

K

Here.

Hereupon the detested *Achan* confesseth the truth in particular. But where doth it appeare that he was deposed, or by what conceived words or forme of Oath doth he sweare? Except we shall say there is no difference, betweene the in-
treaty or charge of the Magistrate, remembering the glory of God, and an Oath taken and pronounced by the offendour to confesse the truth. Which granted, it must consequently follow, that whosoever is in that manner charged and confesseth not the truth, although hee have no will to sweare, is both a lyer and a perjured person. Which were a hard conclusion, very absurd, if every such kind of speech should straight way make an Oath, for then would it follow that the Devill made our Saviour to sweare at such time as he said: I charge thee by God, that thou torment mee not.

Marke 5.7.

I know very well what that learned and excellent light of
(f) *Printed Anno 1562. in fol. l. i. c. 8. f. 1. 9. b. Sect. 24.* Gods Church *Mr. Calvin* saith in his booke of Institution
of Christian Religion, (f) that is: How *Ioshua* minded to
drive *Achan* to confesse the truth, said: My Sonne, give
glory to the Lord God of Israell, meaning thereby that the
Lord is greevously dishonoured, if a man sweare falsely by
him. And no marvell, for we doe as much as in us lieth, in
a manner to staine his Holie name with a lye. And that
this manner of speech was used among the Jewes so oft as
any was called to take an Oath, appeareth by the like pro-
testation, that the Pharises use in the Gospell of Iohn,
Iohn 9. 24:

*Edite con-
fessionem
Iehova
Deo.*

In the Booke of *Ezra* we read the same Parafe (give praise
unto the Lord) *Ezra 10. v. 1* as some in English have Tran-
slated, but according to the Latine Translation the words are,
make Confession unto the Lord God. So that, although it
be granted, that where an Oath was given for the Confes-
sion of the Truth, there the Magistrate used those vvords,
(give glory unto God, putting the party in mind thereby of
the Majestie of Almighty God) yet followeth it not, that in
every

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every place where we finde the same speech, there the party to whom it was spoken, had taken an Oath to confesse the matter whereof he was demaunded.

But bee it granted that *Ach. n.* made his Confession by Oath, yet nothing will ensue thereof to justifie the dealings *Ex Officio* of our High-Commissioners; For if they would follow only this legall course inquisition, set forth in this sacred History, that is, after an offence committed so greivous and dangerous to the publique estate, and the same made knowne and notorious; would then only seeke the partie offending, and that by due and lawfull course of triall, and having found him, then after so mild and curteous a manner, and in the name of God intreat, (or if they thinke good, depose him to reveale the truth in particular. No man would finde himselfe greived with their proceedings; But their unjust dealing in this great abuse of an Oath, cannot by authoritie of the Holy Scriptures be any way defended or maintained though the party deponent is no further bound to answer then the Law requireth, since it is false for the Conscience of the deponent, to stand upon tearmes and Questions, how farre by Law, and by what Law he is bound to answer.

I have sufficiently demonstrated the Oath *Ex Officio* to be against the Law of God * (to which every mans Law must be consonant) in the former Treatise. Therefore I now proceed againe to the Common-Laws of this Realme, *See Dec- Dr. tor and* *Cozens (g)* is so audacious as to maintaine the said Oath to bee *Student.* warranted by the Common-Lawes and Statutes of the same, that so *(g)* in his I may deliver both our Lawes and Iustice of our Land from *Apol.* so foule a flaunder. part. 3. c. 8

Concerning the Common-Laws of this Realme, wee may *The Law* finde an Oath diversly allowed off, and used in causes of suite of the judicially depending. But that the Oath *Ex Officio* is war- *Land.* natable & lawfull by authoritie of the Common-Law, I am sure can never be proved either by good record, or sound report of the same, to be at any time, either offered by Magistrate or

taken by the Subject; but this may truly be said to the great honour and high commendations of our government, that the Common Lawes have not imposed or appointed (but ever rejected and impugned as a thing unlawfull and injurious) an Oath to be used (in Criminall causes and suites, whereby either the losse of Life, Liberty, member of the body, or good name, may ensue) otherwise then for the helpe and releife of our necessity, either for the assurance of our duties, covenants, contracts and promises, as we are or make; or to procure Faith or Credit (certainty of prooffe failing) to the truth which we affirme: That an end of controversies may be had; For an Oath for confirmation is amongst men an end of all strife. *Heb. 6. 16.*

Our Lawes neither urge by Oath any Man to accuse or excuse himselfe, nor authorizeth Bishops to cite men to appeare before them, without expressing any speciall cause. But reject the Oath as unbecoming a well governed State or Common-wealth. For it is declared by the Statute of * *Magna Charta*, 9. H. 8. c. 29. (though Dr. *Cozens* † will not find it, till he be led to it (as a beare to the stake) but for that takes the words of the 28. Chapter, and for direction to finde it quotes the 19.) *that no freeman shalbe taken, or imprisoned, or be diseased of his freehold, or Liberties, or free-customes, or be outlawed, or exiled, or any otherwise destroyed, nor we shall nor passe upon him, nor condemne him, but by Lawfull judgement of his peeres, or by the Law of the Land.*

* 52. H. 3. c. 22. And it is enacted by the Statute of * *Marlebrigh*, 52. H. 3. c. 22. that no man may compell any freeholder of this Realme, to sweare against his will, without the Kings precept or commaundement.

† *Ed. 3.* c. 9. And in Anno † 5. *Ed. 3.* c. 9. it is enacted, that no man shalbe attached upon any accusation, contrary to the forme of the great Charter, and the Law of the Realme.

How then shall this kind of proceeding *Ex Officio* by forced Oaths, and the urging of it, with straight imprisoning of such

such as refuse to sweare, be justifiable, since it is evident that
unlesse the Ordinaries could prove their forcing of it to bee
warrantable by authoritie of the Lawes and Iustice of this
Land (as in truth they cannot) all their dealings in such
cases , are by the same Lawes utterly disallowed and con-
demned.

That the Oath *Ex Officio* hath been adjudged unlawfull, is
cleare by *Hinds Case*, *Mich*, 18. *Eliz.* quoted in my former
reasons, and by Iudge *Dier* in his * Reports, *Mich*. 1. and 2. ‡ *In A.*
Eliz. in *Strogges Case*, in the margent, thus: *Simile M. 18. f. poll. part.*
per Hind qui noluit jurare coram Inst. Ecclesiast. super articulos 3. c. 7. p.
pro usura; though ‡ *Dr. Cozens* denies it. 83. 84.

If it be said (for what will not be said for a defence) that
the King heretofore gave in Commissions , power and au-
thoritie by expresse words unto the Commissioners Eccle-
siasticall, to examine by Oath the persons accused or pre-
sented. *Objection.*

I answer, it is not likely; For then *Dr. Cozens* in his (b) A- *Answer.*
pologie , which answers *Mr. Morrice* his Treatise of Oaths, (b) Part.
would have confirmed the foresaid objection , by citing or 3. c. 8. f.
shewing their Commission ; and not have suffered *Mr. Mor-* 98.
rice to have gone with his answer uncontrouled, or with a re-
ply to little or no purpose; as, to prove their Commission against
Law. Whose answer is: (i) Admitt it were true (that the (i) In his
King by Commission hath given power and authority unto *Treatise of*
the Commissioners to examine by Oath) that such kind of *Oaths*, p.
Oaths were consonant to the Law of God. Yet were the 37.
same no sufficient or Lawfull justification, in as much as we
have proved, and further shall prove such examinations and
inquiries upon Oath to be injurious both to the Prince and
people of this Realme , and to impugne our government
and forme of Iustice.
In which Cases the Kings Grant or Commission is of no
force in Law.

For as *Bracton* well hath written: *Potestas Principis juris est, non injuria, & cum ipse sit author juris, non debet inde injuriam nasci occasio unde jura nascuntur.* That the King by
 „ his Commission or graunt, or otherwise then by Parlia-
 „ ment, may not change or alter the Lawes of this Realme,
 „ nor the order, manner, or forme of administration of Ju-
 „ stice, is rightlie also noted unto us by that grave & learned
 „ Iudge *Mr. Fortescue*, saying: *Non potest Rex Angliae ad-*
libitum suum leges mutare Regni sui Principatu, namque nedam
Regali sed & Politico ipse suo populo dominatur.

Fullers
Argumēt,
p. 17.

** Fuller*
p. 16.

„ And by the Book also of Anno 11. H. 4. where it is agreed
 „ that neither the King by his grant, nor the Pope by his
 „ Bulles (for all his triple Crowne) can change or aler the
 „ Lawes of the Land, whereunto concurre divers other books
 „ of the report of the Law. Worthie also of remembrance is
 „ that saying of Justice *Scroope*, Anno 1. Ed. 3. fol. 26. If the
 „ King (saith hee) commaund any thing impossible that will
 „ the Law will in the Case must be done? if he commaund
 „ any thing contrary to Law, his Iustices ought not to doe it.
 „ * Anno 42. Ed. 3. Aff. 5. there was a Commission awarded
 „ out of the Chauncery to apprehend a certaine subject of
 „ this Realme, and to seize his goods and chattels, no indict-
 „ ment, suite of partie, or other due processe of Law prece-
 „ dent, and the same was by the Iustices holden to be altoge-
 „ ther void, as a matter against the Pollicy of the Realme,
 „ and manner of execution of Iustice.

„ Likewise it appeareth in the same yeare, that a writt pro-
 „ ceeding from the Chauncery, to inquire of Champerties,
 „ Conspiracies, &c. whereby one of the Kings Subjects stood
 „ indited, was by Iustice *Knevet* upon the Resolution of
 „ the rest of the Iudges, damned and adjudged void, in res-
 „ pect that such matters are not inquirable by writ, but by
 „ Commission.

(k) In his
Treatise,
p. 18. 19.

And I should much marvelle (saith *Mr. Morrice* (k) were
 it not that the World hath ever been set in wickednes, how any
 that

that professe the name and title of Christianity, durst at any time put in practice within this Realme, or else where so propbane and more then Heathenish manner of inquisition, not only repugnant to God, Christian Religion, (and the Common Law of this Realme) but contrary also ^{3 Common Law.} to the Rules and Cannons of the Antichristian Church of Rome. Which Lawes (if I be not deceived) are more just and lesse unjust a great deale, then such as have taken upon them to judge by colour of the same. So that in a sort it may be verified of them, which was sometimes spoken of the people of Athens, that having just and good Lawes they nevertheless behived themselves as bad and dishonest men. For it is said by some of their Canonists, (1) that the inquisition is not orderly done, but where infamia præcedat vel talia judicia sufficientia quæ probentur per testes idoneos. And to prove the same or infamy, there is required testes multi, the reason, quia dicta paucorum non infamant. Secondly, they must be graves & honesti, non malevoli, nec inimici partis. Thirdly, they must be such as are conversant in the place where the party hath lived, whereby they may be acquainted with the order and manner of his Life and conversation, whereupon chiefly riseth the true Judgement of his good or evil fame. Fourthly, those witnesses ought to be received judicially. Fifthly, they must be deposed. And sixthly, they are to render a wise and sufficient cause of their knowledge of the infamy. The Judge in no cause (if he would of his owne knowledge say the party is infamous) is to be received or believed, the reason is for that the Law will quod secundum acta & probata iustitia ministratur. And the ground and foundation of the Inquisition must not be extorted or wrested from the party, but lawfully proved, as aforesaid by sufficient witnesses.

(1) Io. petr.
de Ferrari
in prac.
sub. rubr.
forma in-
quisitionis
& fama
publ.

This being the true and only course of proceeding by Ordinaries and Ecclesiastical Judges in causes criminall. Where is then become the exacting of the Oath *Ex Officio* so often used to answer all interrogatories that shalbe ministred, and that before notice or understanding of the Crime objected? Doth it not appeare by the resolution of this and other Civilians, and Canonists quoted in the foregoing Treatise, that the same have no good or sufficient warrant by the Law, how long or much soever by colour and pretence of Law & Justice they have been practised or imposed.